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ABSTRACT

In 1982, a national report examining law and policy for juvenile justice records concluded that the public's faith in the potential for rehabilitating juvenile offenders had eroded. To understand better the nature of juvenile crime, it was suggested that data surrounding this issue be systematically collected. Some of that information effort is reported here. This report provides a comprehensive overview of the status of juvenile justice records and information systems as of the mid-1990s. It also offers an analysis of related information and privacy issues. The text is divided into five parts. Part 1 recaps juvenile crime statistics, including the frequency and severity of these crimes. In part 2, the development of the rehabilitative ideal and the establishment of the juvenile court system is detailed. Because the public's shaken confidence in rehabilitating delinquents resulted in more youth being placed with adult criminals, part 3 of this report looks at the results of this move. Part 4 reviews the law and policy issues relevant to the dissemination of juvenile records, and part 5 looks at the current state of juvenile justice recordkeeping. The booklet concludes with a discussion of juvenile justice trends and the integration of juvenile and adult records. (Juvenile Justice timeline and Bureau of Justice statistics report included.) (RJM)

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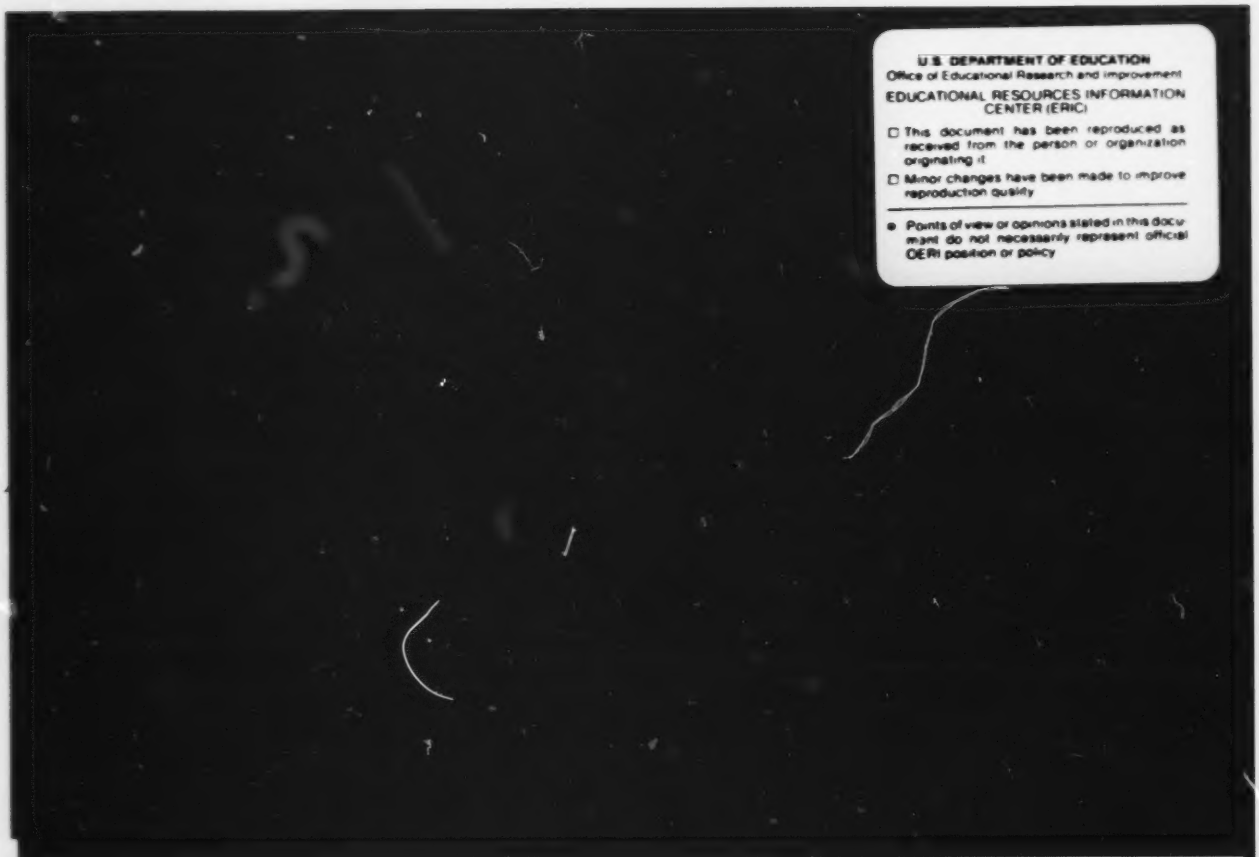
Privacy and Juvenile Justice Records: A Mid-Decade Status Report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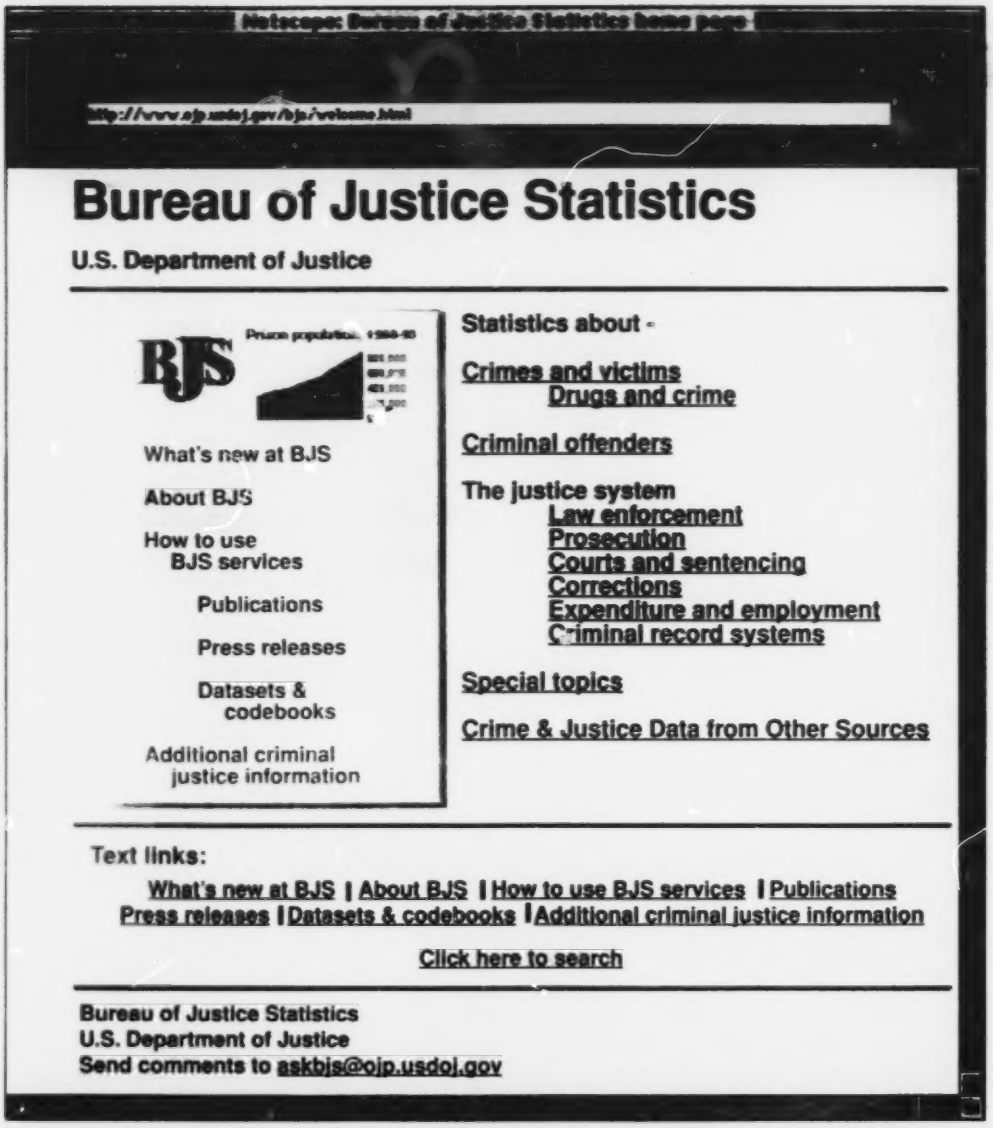

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Privacy and Juvenile Justice Records: A Mid-Decade Status Report

A Criminal Justice Information Policy Report

May 1997, NCJ-161255

U.S. Department of Justice
Office of Justice Programs
Bureau of Justice Statistics

Jan M. Chaiken, Ph.D.
Director

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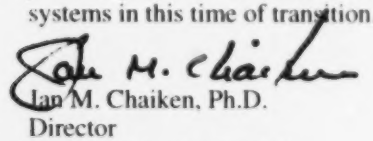
Foreword

The Bureau of Justice Statistics is pleased to publish *Privacy and Juvenile Justice Records: A Mid-Decade Status Report*. This report is a comprehensive and broad overview of the status of juvenile justice records and information systems as of 1995, as well as an analysis of related information and privacy issues.

This is the fourth major report in 15 years on juvenile justice records and recordkeeping systems published by BJS, and reflects the intense public interest focused on the juvenile justice system at this time. The juvenile justice system is undergoing major review and changes: almost every State has taken official steps designed to bring the treatment of juveniles closer to the criminal justice treatment accorded adults. Legislative, administrative and legal changes have combined to reverse the underlying goals of the juvenile system as it has existed since its inception nearly 100 years ago.

These changes not only raise many questions, they also create challenges with respect to the law, policy and information systems. We hope that this report will be of value to policymakers and practitioners who are addressing the critical issues relating to juvenile justice records and information systems in this time of transition.



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Contents

Executive summary vii

Introduction 1

Part I. The nature and severity of juvenile crime 4

Part II. Juvenile justice system history and development 6

Part III. The relationship between adult and juvenile courts 8
- Judicial waiver 9
- Prosecutorial waiver 10
- Automatic transfer based upon age 10
- Waiver and transfer case law 12
- Impact of waiver and transfer upon juvenile records 13

Part IV. Juvenile records: Disclosure and confidentiality 14
- Access to juvenile law enforcement and court records by the adult system 14
- Sealing and purging 15
- Illustrative State laws 16
- 1995 legislative activity 19
  - State activity 19
  - Federal activity 19
- Disclosure to the public and the media 20
  - Legislative activity 20
  - Judicial activity 21

Part V. The juvenile record information system at mid-decade 23
- Juvenile law enforcement records 23
- Juvenile court records 24
- One record, one system? 26

Conclusion 28
- Juvenile justice trends 28
  - More juveniles are subject to transfer to adult court 28
  - Juvenile justice record information is increasingly available outside the juvenile system 28
  - Integration of juvenile and adult records is increasing 29
- Status at mid-decade 29

Appendix: Juvenile justice timeline 31

Executive summary

This report — *Privacy and Juvenile Justice Records: A Mid-Decade Status Report* — is intended to provide a comprehensive and broad overview of the status of juvenile justice records and information systems as of the mid-1990s and an analysis of related information and privacy issues.

The report is especially timely. By the middle of the 1990s, profound developments have combined to produce an alchemy that is fundamentally changing juvenile justice records and information systems, as well as privacy policy for juvenile records. These developments are as follows:

- Juvenile crime, unlike its adult counterpart, rose rapidly in the early 1990s, with a resulting high level of public alarm over violent juvenile predators, juvenile gangs and juvenile drug use.
- The public's faith in the potential to rehabilitate juvenile offenders has eroded to the point where the public — at least as reflected in recent State legislative activity — enthusiastically supports strategies which treat juveniles, particularly older and violent juveniles, as adults, rather than segregating juveniles in more treatment-oriented environments.
- Increasingly, juvenile justice record information is being made available, by law and in practice, outside of the juvenile justice system and for nonjuvenile and noncriminal justice purposes, such as employment and licensing background determinations.
- Juvenile records — in far more states today than in the past — are captured in adult record systems, where they are automated and fingerprint-supported.
- The traditional juvenile justice recordkeeping regime — manual records maintained on a name-only, decentralized, local and system-specific basis, with little communication between juvenile courts and law enforcement and even less communication between juvenile courts and noncriminal justice decisionmakers — is giving way to a new order wherein juvenile records are available in the same manner as adult criminal justice records.
- The quality of juvenile justice records and the effectiveness of juvenile justice record systems appears to lag substantially behind the quality of adult criminal justice records and record systems. Therefore, there is a pressing need for empirical assessments of the status of juvenile justice records and record systems and for improvements as indicated by such assessments.

Introduction

In 1982, a national report examining law and policy for juvenile justice records concluded that the public's faith in the potential for rehabilitating juvenile offenders had eroded, thus laying the groundwork for retooling the decades-old policy of strict juvenile record confidentiality.[1] In the wake of a significant rise in serious juvenile crime and recidivism, the 1982 report suggested that the juvenile record agenda for the 1980s should address the following issues:

- Whether the notion of juvenile rehabilitation has vitality and, if so, whether confidentiality promotes rehabilitation.
- Defining the age of a juvenile — does it make sense to think of juveniles as 13, 14 and 15 rather than 16, 17 and 18?
- Developing policies and practices for the creation, maintenance and disclosure of juvenile justice record information by police and other law enforcement agencies which, as of 1982, lagged far behind juvenile courts in developing these policies.
- Developing policies for access to and challenge and correction of juvenile justice records by juvenile record subjects.
- Establishing interfaces and connections between juvenile and adult record systems.
- Developing policies for the disclosure of juvenile justice record information outside of the juvenile and criminal justice systems.
- Reevaluating sealing and purging policies and correlating those policies with emerging confidentiality and disclosure policies.

Almost 15 years later, much of that agenda has been addressed on the State level. The age of juveniles subject to juvenile court jurisdiction, for example, has steadily retreated so that today, a growing number of States treat older juveniles as adults, particularly in cases of serious or repeat offenders. In addition, juveniles and their families, and increasingly, victims of juvenile crimes have ready access to appropriate and specific juvenile records. Further, the adult and the juvenile record systems are working together better today than ever before, with growing amounts of juvenile record information maintained by, although not necessarily integrated into, adult criminal history systems. Finally, many States are developing standards for access to juvenile record information by noncriminal justice agencies. This process is by no means complete, but, by the mid-1990s, is in full play.

On the other hand, two of the seven items on the 1982 agenda have seen little progress. Sealing and purging policies remain on the books in every State but these policies are frequently out of sync with juvenile record confidentiality and disclosure policies. Of perhaps greater concern, but certainly no surprise, the Nation continues to struggle with the concept and practicality of juvenile rehabilitation and its relationship to juvenile record confidentiality.

In 1988, baseline data from the first-ever survey of the content and quality of juvenile records found that juvenile records maintained by law enforcement agencies were in need of improvement, often lacking fingerprint support and dispositions.[2] In 1988, only one-quarter of the Nation's law enforcement agencies were fingerprinting juveniles. Therefore, without fingerprint support, most State central repositories of adult criminal history records were unable to accept juvenile record information. Finally, and not surprisingly, the 1988 report found that juvenile justice practitioners

[1]U.S. Department of Justice, Bureau of Justice Statistics, *Privacy and Juvenile Justice Records*, Criminal Justice Information Policy series, by Robert R. Belair, SEARCH Group, Inc. (Washington, D.C.: Government Printing Office, 1982) [hereafter Privacy and Juvenile Justice Records Report].

[2]U.S. Department of Justice, Bureau of Justice Statistics, *Juvenile Records and Recordkeeping Systems*, Criminal Justice Information Policy series, by Sheila J. Barton and Paul L. Woodard, SEARCH Group, Inc. (Washington, D.C.: Government Printing Office, November 1988) [hereafter Juvenile Records and Recordkeeping Systems Report]. This survey reached 500 law enforcement agencies throughout the Nation; all 50 State central repositories of adult criminal history records; and 45 of the Nation's largest juvenile court systems.

face "growing pressure to lift traditional protections governing juvenile records."[3]

In 1989, a national conference, "Juvenile and Adult Records: One System, One Record?," focused on what was then, as now, a key question — how much confidentiality should be preserved with respect to juvenile records.[4] The conference proceedings noted that the arguments in support of confidentiality retained vitality — juveniles do not have the criminal capability, or *mens rea*, to be responsible for their actions; a juvenile justice record carries with it a stigma that will mark and mar a juvenile for life; and most juveniles are, in fact, "rehabilitated." The vast majority of juveniles desist from crime, with only a small minority engaging in chronic and serious recidivistic behavior.

The proceedings also recapped arguments for opening juvenile records, including the frequency and severity of juvenile crime in the late 1980s and the serious threat posed by juvenile recidivists. The report further noted that by the end of the 1980s, the question that loomed large in 1982 — to what extent could juvenile records be used in adult criminal proceedings — was largely settled in favor of open and complete use. After all, where a juvenile offender is in an adult criminal court, there is at least the strong possibility that this juvenile has, in fact, not been rehabilitated. Therefore, the juvenile has a less compelling privacy interest and the public has a correspondingly stronger interest in evaluating and using the offender's juvenile record.

The conference proceedings, however, documented a sharp debate over the standards for disclosure of juvenile records outside of the adult criminal justice system. The debate was summed up in this way:

> The real question is going to be whether we can figure out some basis for convincing policymakers that there *are* certain juveniles who *are* a good risk for society and therefore, their juvenile records should be kept strictly confidential so as to improve their chances for rehabilitation. On the other hand, there are those juveniles who will continue their criminal career ... as an adult, and we are going to find that their records will be widely available over the next 10 years, not only within, but also outside of, the adult criminal justice system.[5]

In the early 1990s, juvenile crime, unlike its adult counterpart, continued to rise. While juvenile desistance is frequent and important, so, too, is recidivism. Part I of this report briefly recaps juvenile crime statistics. The frequency and severity of juvenile crime, more than any other factor, has continued to erode the near century-old belief that juveniles are incapable of a criminal mindset and that, accordingly, juveniles make ideal candidates for rehabilitation. In Part II, this report highlights the development of the rehabilitative ideal or treatment model and the related establishment of the juvenile court system.

Erosion of the belief in the rehabilitative ideal has similarly eroded allegiance to the concept that juveniles should be segregated from hardened adult criminals and adjudicated in the treatment-oriented environment offered by juvenile courts. In Part III, this report looks at the predictable result. More and more juveniles are tried in adult courts. This phenomenon has two profound information implications. First, juvenile records must be improved in order to permit judges to identify "hardened" juvenile offenders who are candidates for processing in the adult courts. Second, the record generated by this adult adjudication, a record that once would have been generated by a juvenile court and treated as a juvenile record, is now treated as an adult record.

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[3]Ibid., p. v. *See also*, SEARCH Group, Inc., "Survey of the States: Report of Juvenile Fingerprinting Requirements" (unpublished report, January 1990) pp. 1-4. This 1990 survey found that, while almost all States print juveniles when they are tried as adults and 79 percent of the States permit fingerprinting of juveniles tried for offenses which would be felonies if committed by adults, only 34 percent of the States permitted fingerprinting of juveniles when tried for an offense that would be a misdemeanor if committed by an adult.

[4]*See*, Marvin E. Wolfgang, "The Nature and Severity of Juvenile Crime and Recidivism," in *Juvenile and Adult Records: One System, One Record?, Proceedings of a BJS/SEARCH Conference*, U.S. Department of Justice, Bureau of Justice Statistics, by SEARCH Group, Inc. (Washington, D.C.: Government Printing Office, January 1990) p. 12 [hereafter Juvenile and Adult Records Proceedings].

[5]Robert R. Belair, "The Future Availability of the Juvenile Record," in Juvenile and Adult Records Proceedings, p. 74, *supra* note 4.

Part IV of this report reviews the law and policy issues relevant to the dissemination of juvenile records. Not surprisingly, given the developments discussed in the first several sections of this report, juvenile record information is being made increasingly available outside of the juvenile justice system. Adult courts and law enforcement, and sometimes noncriminal justice governmental agencies, such as the national security community, enjoy unprecedented access. Private employers, educational institutions, insurers and others, oftentimes for the first time, are also enjoying access to juvenile justice records.

Part V of this report looks at the current state of juvenile justice recordkeeping. This part concludes that juvenile records, even when generated by juvenile courts, are being increasingly captured in adult criminal history repositories. This means that juvenile records are increasingly fingerprint-supported, juvenile records are increasingly automated and, now more than ever, juvenile records are available through a national search.

Without much debate, the traditional juvenile record regime — manual records maintained on a decentralized, local basis and cloistered from eyes outside of the juvenile justice system — is giving way to an automated, centralized system providing records to criminal justice and even to noncriminal justice users.

There are those who regret the impact that these changes are likely to have on a juvenile's chances for rehabilitation and a second start. In an era, however, where both the substance and, particularly, the perception of frequent, remorseless, violent juvenile crime is so high, this result — right or wrong, good or bad — seems inevitable.

The development and evolution of policies governing juvenile justice and the exchange of juvenile records reflect the interface between prevailing attitudes toward offender rehabilitation, trends in crimes committed by persons other than adults, and technological advances which facilitate record access and also permit the selective release of information for specific uses.

This document addresses these changing policies governing juvenile justice records.

Part I. The nature and severity of juvenile crime

In hard numbers, juvenile crime significantly increased between 1984 and 1993. During that period, arrests of people under age 18 for murder and non-negligent manslaughter increased by 167.9 percent. Arrests for aggravated assault increased by 98.1 percent. Arrests for forcible rape increased by 9 percent. Arrests for other assaults increased by 112 percent. And arrests for weapons possession rose by 125.6 percent.[6]

Juvenile arrests for certain property crimes are also on the rise. Between 1984 and 1993, arrests for stolen property increased by 42.6 percent. In fact, although those between the ages of 13 and 18 comprised only 8 percent of the population in 1989, they were arrested for 31 percent of the thefts (larceny), 34 percent of the burglaries and 41 percent of the motor vehicle thefts that year.

At best, if arrest rates remain stable at 1993 levels, juvenile arrests will rise 22 percent between now and the year 2010, an increase attributable to population growth as children of the "baby boom" generation reach adulthood. At worst, if the past decade's growth trend in juvenile arrests continues at the same level, arrest rates will more than double by 2010.[7]

Recidivism rates among juvenile offenders have *not* increased, but a relatively small percentage of juvenile offenders are chronic and frequent recidivists, accounting for the vast majority of juvenile offenses. Most studies indicate that only about one-third of juvenile offenders ever commit a second offense. Moreover, a very small percentage of juvenile offenders, varying from as low as 5 percent to as high as perhaps 25 percent, are so-called "chronic offenders," responsible for the majority of juvenile crime and racking up multiple arrests and adjudications.[8] Several recent studies, for example, conclude that chronic, hard-core juvenile recidivists account for over 65 percent of robberies by juveniles, over 65 percent of rapes, over 60 percent of aggravated assaults, over 70 percent of motor vehicle thefts, and over 60 percent of homicides.[9] The disproportionality of juvenile offenses committed by chronic juvenile offenders leads some juvenile justice researchers to decry the erosion of confidentiality standards for information relating to the large majority of nonchronic juvenile offenders.

The increase in juvenile crime is taking place at a time when crime overall is going down after decades of steady increase. The FBI's "Uniform Crime Reports" for 1995 reported a 3 percent decrease in serious crime from 1994, with murder down 7 percent, forcible rape down 5 percent and robbery down 6 percent.[10] Many factors may be responsible for the adult crime trend: the implementation of community policing concepts; a greater willingness among neighborhood residents to reclaim their streets; stiffer mandatory minimum sentences; "three strikes" provisions; or an abundance of new prison space. Whatever the reason, the adult trend, so far, is not having a noticeable impact on youths between the ages of 10 and 17.

Why? The deteriorating social and economic conditions of American cities is a possible factor. In 1992, 14.6 million juveniles lived in families with incomes below the poverty level, 42 percent more than in 1976. Poverty rates for black and Hispanic teenagers were far higher than those for their Caucasian counterparts.[11] In 1960, one child in 20 was born to an unmarried mother. By 1990, it was one in four. During this period, the

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[6]U.S. Department of Justice, Bureau of Justice Statistics, *Sourcebook of Criminal Justice Statistics: 1994* (Washington, D.C.: Government Printing Office, 1994) p. 383 [hereafter Sourcebook]. *And see*, U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, *Juvenile Offenders and Victims: A National Report*, by Howard N. Snyder and Melissa Sickmund, National Center for Juvenile Justice (Washington, D.C.: Government Printing Office, August 1995) [hereafter Juvenile Offenders and Victims Report]. This report uses the term "arrest" to encompass a variety of juvenile detentions, charges and prosecutions.

[7]Juvenile Offenders and Victims Report, p.111, *supra* note 6.

[8]*See*, Ibid., pp. 49-50. *And see*, P. Tracy, M. Wolfgang and R. Figlio, *Delinquency Careers in Two Birth Cohorts* (New York: Plenum Press, 1990) pp. 38-40.

[9]Juvenile Offenders and Victims Report, pp. 50-51, *supra* note 6.

[10]U.S. Department of Justice, Federal Bureau of Investigation, *Crime in the United States, 1995, Uniform Crime Reports*, (Washington, D.C.: Government Printing Office, October 1996) pp. 11, 14, 24, 27.

[11]Juvenile Offenders and Victims Report, p.7, *supra* note 6.

proportion of children living in two-parent families declined from 85 percent to 73 percent.[12]

A recent study of young felons age 12 to 18 in Ohio's juvenile prison system further illustrates that most young people who are chronic offenders are also the victims of starkly substandard social and economic conditions. The Ohio study found, for example, that:

- 90 percent of Ohio juvenile incarcerates have substance abuse problems with marijuana, crack, heroin or alcohol;
- 5 percent are homeless;
- Approximately 30 percent have mental disorders;
- 75 percent of the girls and 50 percent of the boys have been sexually assaulted;
- Almost 25 percent of these young offenders have their own children;
- More than 6 out of 10 offenders lived with single mothers; and
- More than 8 out of 10 youthful offenders incarcerated in Ohio come from households with incomes below $10,000 per year.[13]

As an Ohio prison official concluded, "These kids are the throwaways of society."[14]

There may be, of course, other explanations beyond poverty and neglect. The easy availability of powerful handguns and semiautomatic weapons may have turned youthful dispute resolution into a matter of deadly confrontation. Arguments and jealousies that once were straightened out with words and fists could now end in gunfire.

Since 1983, gun homicides committed by juveniles have nearly tripled.[15] Drug use among high school seniors, while nowhere near the record levels of the 1970s, is on the rise after a decline in the late 1980s and early 1990s.[16] Drug arrest rates for black juveniles paralleled those of whites from the mid-1970s to the mid-1980s. The advent of crack cocaine, however, changed all that: black drug arrests now are five times higher than equivalent rates for whites.[17]

In addition to these traditional kinds of sociological explanations, more elusive causes have been suggested for the recent surge in juvenile violence. Jose E. Castillo, chief juvenile probation officer in Bexar County, Texas, put it this way: "In the past, kids would kill for a reason — someone made them angry. Now, there is just a lot of indiscriminate violence. They don't care who they hurt, and weapons have become more sophisticated and powerful."[18] Violence in popular music, television, movies and video games may also contribute to what many see as an alarming sense of dehumanization.

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[12]Ibid., p. 10.

[13]Thomas, "Next Stop: Prison," *Washington Post*, 18 March 1996, p. A1 [hereafter *Washington Post*].

[14]Ibid.

[15]Juvenile Offenders and Victims Report, p. 58, *supra* note 6.

[16]Ibid., p. 59.

[17]Ibid., p. 120.

[18]"Kids Who Kill," *San Antonio Express-News*, 20 November 1995, p. 1 [hereafter *San Antonio Express-News*].

Part II. Juvenile justice system history and development

The proper mix of social and law enforcement programs necessary to address juvenile crime remains hotly contested in Washington and in State capitols. But whatever the ultimate outcome, the effect of this debate on the maintenance of juvenile records already is considerable. A system initially designed to be a confidential social service record repository is under pressure to become a modern, interactive criminal history database. This is far from what the Illinois State legislature had in mind in 1899 when it established the Nation's first independent juvenile court system, in which "children were not to be treated as criminals nor dealt with by the process used for criminals."[19]

The juvenile court was one of the many products of the "Progressive Movement" of the late 1800s. To the Progressives, crime was the result of external forces, not of the exercise of an individual's free will. Their goal was to reform the offender, not punish the offense. This concept of the "Rehabilitative Ideal" was the kernel of the Progressive justice reforms, including the formation of the juvenile court.[20]

The Progressives saw children as "corruptible innocents" who needed "special attention, solicitude and instruction."[21] As this view gained currency, it seemed logical to establish a separate court system to apply the Rehabilitative Ideal to juveniles.

This concept owed much of its existence to the Victorian ideal of childhood as a special period in life that requires extra protection from the harsh realities of the adult world. In some measure, however, the concept is also a reaction to the world of the early 19th century in which there was considerably less tolerance for the misdirection of youth. Stoking the wrath of reformist organizations such as the Society for the Prevention of Juvenile Delinquency were cases like *State v. Guild*, a New Jersey court opinion published in 1828. It tells of a 12-year-old boy named James Guild, on trial for killing a woman named Catherine Beakes. He was found guilty and subsequently executed by hanging.[22]

The Illinois juvenile court of 1899 embraced the British doctrine of *parens patriae* (the State as parent). States became overseers of children whose natural parents had failed to carry out their supervisory responsibilities. The juvenile court was there not to punish the child, but to serve a benevolent role.[23] The U.S. Supreme Court in 1967 summarized it this way: "The early conception of the Juvenile Court proceeding was one in which a fatherly judge touches the heart and conscience of the erring youth by talking over his problems, by paternal advice and admonition and in which in extreme situations, benevolent and wise institutions of the State provided guidance and help, to save him from a downward career."[24]

By 1910, a total of 32 States had followed Illinois' lead in establishing either juvenile courts or juvenile probation services. By 1925, there were only two States that had not gone this route.[25] The reform-minded legal thinkers and courts of this era were guided by two bedrock principles. First, juveniles lack the *mens rea* (criminal intent) necessary under law to establish criminal culpability and, no matter how dastardly the crime they may have committed, juveniles can be treated, rehabilitated and reformed. The second principle flowed logically from the first: Impressionable, malleable children, not yet hardened to the criminal way of life, were not truly responsible for their actions in the same way adults would be had they committed the crimes at issue. Youthful wrongs, therefore, should not condemn a child to the same lengthy, numbing process of punishment that an adult in similar circumstances would face.[26]

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[19]Privacy and Juvenile Justice Records Report, p.11, *supra* note 1.

[20]Barry C. Feld, *Criminalizing Juvenile Justice: Rules of Procedure for the Juvenile Court*, 69 MINN. L. REV. 141, 142-48 (1984).

[21]Ibid., p. 144.

[22]Ibid., p. 142.

[23]Juvenile Offenders and Victims Report, p.70, *supra* note 6.

[24]*In re Gault*, 387 U.S. 1, 25-26 (1967).

[25]Janet E. Ainsworth, *Re-imaging Childhood and Reconstructing the Legal Order: The Case for Abolishing the Juvenile Court*, 69 N.C. L. REV. 1083, 1096-97 (1991). By 1945, every State had a juvenile court. Edmund F. McGarrell, *Juvenile Correctional Reform, Two Decades of Policy and Procedural Change* (Albany: State University of New York Press, 1988) p. 6.

[26]Joseph J. Senna and Larry J. Siegel, *Juvenile Law — Cases and Comments* (St. Paul, Minn.: West Publishing Co., 1976) pp. 2-3.

Juvenile judges were not to be tied down to some rigid formula of fitting punishment to crime. In a less formal way, the benevolent court could fashion a solution to a juvenile's individual circumstances, combining legal and extra-legal methods of addressing the problems at hand. Since this was not an adversarial system, the constitutional guarantee of due process was thought to be out of place. Treatment plans could consist of differing mixes of probation and "training schools." But first and foremost, dispositions were always to be tailored to "the best interests of the child." A child eventually would either be reformed or lapse into the adult criminal justice system, where the clock essentially would be reset to zero.

The juvenile justice recordkeeping system at this stage closely paralleled the predominant philosophy of shielding the child. Confidentiality became paramount precisely because nonculpable juveniles could not and should not be branded for life with crimes for which they were not truly guilty. Also, children had little chance of rehabilitation if their names and misdeeds were exposed to public ridicule. A law review commentary in 1909 stressed that the importance of confidentiality was, "To get away from the notion that the child is to be dealt with as a criminal; to save it from the brand of criminality, the brand that sticks to it for life; to take it in hand and instead of first stigmatizing and then reforming it, to protect it from the stigma — this is the work which is now being accomplished (by the juvenile court)."[27]

An entire set of euphemisms grew up around the notion of protecting children, not prosecuting them. Police never arrest juveniles; they are "taken into custody." Authorities "refer" juveniles to juvenile court, never book or arraign them.

The treatment model as a concept of juvenile justice prevailed more or less through the 1950s. By then, a number of factors were combining to change the picture. News accounts of juvenile gangs and Hollywood's spotlighting of "J.D.s" in films like "Rebel Without a Cause" and "Blackboard Jungle" left many people wondering whether all juveniles could be rehabilitated. "Gang-style ferocity — once the evil domain of hardened adult criminals — now enters chiefly in cliques of teen-age brigands. Their individual and gang exploits rival the savagery of veteran desperadoes of bygone days," said no less an authority than FBI Director J. Edgar Hoover in 1957.[28] More importantly, the frequency and severity of juvenile crime eroded confidence in the belief that juveniles lacked the criminal culpability necessary to be judged "guilty" of crimes. At the same time, persistent and severe recidivism associated with the most serious juvenile offenders undermined faith in the belief that juveniles are promising candidates for rehabilitation.

In 1966, the U.S. Supreme Court effectively abandoned the idea that juvenile courts were friendly and informal sources of counseling for wayward juveniles. In *Kent v. United States*, the Nation's highest court said juveniles are entitled to much the same adversarial-type system of due process that is standard in adult criminal courts. This benchmark case involved a 16-year-old accused of forcible entry, robbery and rape. The juvenile judge issued a waiver to adult court without ruling on a jurisdictional motion by the 16-year-old's lawyer. The Supreme Court said that, "While there can be no doubt of the original laudable purpose of juvenile courts, studies and critiques in recent years raise serious questions as to whether actual performance measures well enough against theoretical purpose to make tolerable the immunity of the process from the reach of the constitutional guaranties applicable to adults."[29]

One year later, in 1967, the Court, in *In re Gault*, took the *Kent* rationale a step further. The Court tossed out the doctrine of *parens patriae*, ruling its history murky and its constitutional underpinning doubtful. The Court said that juveniles are entitled to the four basic elements of due process: the right to notice, the right to counsel, the right to question witnesses and the right to protection against self-incrimination. *In re Gault* also challenged the importance of juvenile record confidentiality. "[T]he summary procedures of Juvenile Courts are sometimes defended by a statement that it is the law's policy 'to hide youthful errors from the full gaze of the public and bury them in the graveyard of the forgotten past.' This claim of secrecy, however, is more rhetoric than reality."[30]

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[27]Mack, *The Juvenile Court*, 23 Harv. L. Rev. 104, 109 (1909).

[28]*FBI Law Enforcement Bulletin*, February 1957, 26, quoted in Privacy and Juvenile Justice Records Report, *supra*, note 1, p. 17 [hereafter *FBI Law Enforcement Bulletin*].

[29]*Kent v. United States*, 383 U.S. 541, 555 (1966).

[30]*In re Gault*, 387 U.S. 1, 24 (1967).

Part III. The relationship between adult and juvenile courts

By the 1980s and 1990s, concern about juvenile crime, including the most violent strain of juvenile crime — gang violence — led away from reform of the juvenile justice process and toward the removal of whole classes of juvenile crimes from the juvenile justice system.

Massachusetts' experience is representative. On Halloween night 1990, five youths under age 17 raped, stabbed and beat a girl to death in Boston. The shocking news reports that followed prompted the State legislature to enact amendments to the juvenile code that made it easier to transfer juveniles accused of murder to adult court. For the first time, juveniles accused of murder would enter the legal arena with a rebuttable presumption that they were dangerous and unlikely candidates for rehabilitation. With this presumption in place, transfer to the adult system was easier, but the presumption was regularly overcome.[31]

The following year, an 11-year-old and a 15-year-old were gunned down on the steps of an apartment building in the Roxbury section of Boston. The juvenile accused of actually pulling the trigger evaded transfer to adult court, even under the beefed-up 1990 amendments. This prompted a new wave of legislation making transfers even easier. The law that ultimately emerged required transfer hearings in eight categories of crimes (including first- and second-degree murder, armed burglary and forcible rape of a child) and expedited the timeline for determining probable cause and likelihood of rehabilitation. Moreover, it imposed a mandatory minimum sentence of 15 years for juveniles guilty of murder who manage to avoid transfer and stay within the juvenile court system. This provision guaranteed that *any* juvenile found guilty of murder would spend time in an adult prison, at least once the juvenile reached age 21.[32]

Today, every State provides for the transfer of juveniles to adult courts.[33] Transfer is accomplished through three mechanisms: (1) a discretionary decision by the juvenile court judge ("judicial waiver"); (2) a discretionary decision by the prosecutor ("prosecutorial discretion"); and (3) automatic, statutory exclusion of certain categories of juveniles and crimes from the juvenile courts and assignment to adult criminal courts ("statutory exclusion"). Although the trend to process juveniles in adult courts is growing and receives substantial media attention, it is important to emphasize that the vast majority of youths processed in court are still processed in juvenile court.[34] The 1992 reauthorization of the Juvenile Justice and Delinquency Prevention Act by the U.S. Congress mandated that the General Accounting Office (GAO) study issues arising from the transfer of juveniles from juvenile court to criminal court.[35] The GAO report concludes that, "[I]n recent years many States have changed their laws to expand the criteria under which juveniles may be sent to criminal court."[36] Specifically, the GAO found that since 1978, 44 States and the

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[31] *See*, G. Martin, *The Delinquent and the Juvenile Court: Is There Still a Place for Rehabilitation?*, 25 CONN. L. REV. 57, 61-63 (1992).

[32] Task Force on Juvenile Justice, Reginald C. Lindsay, Chairman, *The Massachusetts Juvenile Justice System of the 1990s: Re-thinking a National Model*, 21 NEW ENGLAND JOURNAL ON CRIMINAL AND CIVIL CONFINEMENT 339, 353-54 (1995).

[33] The 1994 BJS National Survey of Prosecutors found that of the prosecutors' offices handling juvenile cases, 63% had transferred at least one juvenile case to criminal court in 1994. U.S. Department of Justice, Bureau of Justice Statistics, *Juveniles Prosecuted in State Criminal Courts: Selected Findings*, by Carol J. DeFrances and Kevin J. Strom, NCJ 164265 (Washington, D.C.: Government Printing Office, March 1997).

[34] In 1992, 2,800 or more juvenile courts handled a load of 1,471,200 delinquency cases, up 26 percent from 1988. U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, *Offenders in Juvenile Court, 1992*, OJJDP Update on Statistics series, by Jeffrey A. Butts, National Center for Juvenile Justice (Washington, D.C.: Government Printing Office, October 1994). Police departments arrested nearly 2.3 million juveniles in 1992, half below the age of 16. Juvenile Offenders and Victims Report, p. 100, *supra* note 6. Upon arrest, law enforcement makes a decision as to whether to push juveniles further into the system or shunt them into alternative programs. Of those not bound over to adult court, police referred about 60 percent to juvenile courts and handled the remainder internally. Ibid., p. 76-77.

[35] PUB. L. 102-586. The Juvenile Justice Delinquency and Prevention Act Amendments of 1992.

[36] U.S. General Accounting Office, "Juvenile Justice: Juveniles Processed in Criminal Court and Case Dispositions," *GAO Report* (Washington, D.C.: Government Printing Office, August 1995) pp. 2-3 [hereafter GAO Report].

District of Columbia have amended their statutes that address the circumstances under which juveniles may be tried in criminal court. The GAO found that in 24 States, these changes have increased the population of juveniles subject to transfer to adult courts (primarily by decreasing the age at which juveniles may be transferred or by increasing the number and types of offenses subject to transfer); in three States these changes have decreased the population of juveniles subject to transfer; and in 17 States changes in the law have neither increased nor decreased the population subject to transfer.[37]

The National Conference of State Legislatures (NCSL) conducted a review of 1995 legislative activity with regard to juvenile justice issues.[38] An analysis of the NCSL results makes clear that the States are continuing to move quickly to expand adult court jurisdiction over juvenile offenders.

The most frequent legislative change in 1995 expanded the circumstances under which juveniles are transferred automatically to adult court jurisdiction. That year, 11 States — Delaware, Idaho, Indiana, Iowa, Missouri, Nevada, New Hampshire, North Dakota, Oklahoma, Rhode Island and Utah — amended their juvenile justice laws to require, in certain circumstances, transfer of juveniles to adult courts. In all likelihood, these changes reflected legislative frustration at the persistent and severe level of juvenile crime and a related unwillingness to leave jurisdictional decisions to the discretion of prosecutors or juvenile and family court judges.

Idaho, for example, amended its law to require that juveniles charged with arson or aggravated arson be tried as adults.[39] Indiana took a global approach and now requires adult jurisdiction over any juvenile age 16 or older charged with criminal conduct.[40] Iowa acted to exclude juvenile court jurisdiction over juveniles age 16 or older who commit drug-related, firearms or weapons offenses, as well as certain gang activities and "forcible felonies."[41] Nevada now requires that a juvenile age 16 or older who commits a weapons offense, and who has been previously adjudicated delinquent for an offense that would be a felony if committed by an adult, be transferred to adult court.[42] Oregon changed its law to mandate that a child age 15 or older charged with aggravated murder be prosecuted as an adult.[43]

In 1995, four States — Colorado, Idaho, Louisiana and Minnesota — changed their juvenile justice law to expand the circumstances under which prosecutors can opt to charge juveniles as adults.[44] Seven States acted to expand the circumstances under which juvenile court judges could waive jurisdiction and transfer a juvenile case to adult courts: California, Connecticut, Idaho, Louisiana, Tennessee, Texas and West Virginia.[45] In all of those States, the legislature either lowered the age at which a juvenile could be waived to adult court (in some States, such as Connecticut, to as low as age 14), or expanded the list of crimes subject to adult court jurisdiction (such as Louisiana, which added "aggravated burglary" to the list of "waiverable" offenses), or did both. Texas, for example, lowered the age to 14 for waiver of juveniles accused of committing a capital felony, an aggravated controlled substance felony or a first-degree felony.[46]

Judicial waiver

Judicial waiver is the traditional and still the most common form of transfer to adult courts. Every State, except Nebraska and New York, permits judicial waiver.[47]

Over the last few years, the use of judicial waiver has substantially increased. In 1988, out of 569,596 delinquency cases brought before juvenile judges nationwide, 7,005 were waived to criminal court — a rate of 1.2 percent. By 1992, juvenile judges were considering 743,673 cases and waiving 11,748 of those — a rate of 1.6 percent. Not only did the total volume of cases increase in the critical timeframe of the past 8 years, but

[37]Ibid.

[38]National Conference of State Legislatures, *Children, Youth and Family Issues: 1995 State Legislative Summary* (Denver, Colo.: National Conference of State Legislatures, 1995) [hereafter NCSL Report].

[39]1995 Idaho Sess. Laws, chap. 48; *and see*, NCSL Report, p. 117, *supra* note 38.

[40]1995 Ind. Acts, chap. 269-1995; *and see*, NCSL Report, p. 117, *supra* note 38.

[41]1995 Iowa Acts, chap. 191, §§ 8, 12, 54; *and see*, NCSL Report, p.118, *supra* note 38.

[42]1995 Nev. Stat., chap. 444, § 1,5; *and see*, NCSL Report, p.118, *supra* note 38.

[43]1995 Or. Laws, chap. 422, §§ 47-49, 58; *and see*, NCSL Report, p.119, *supra* note 38.

[44]NCSL Report, pp. 116-18, *supra* note 38.

[45]Ibid., p. 116-19.

[46]Ibid.

[47]Juvenile Offenders and Victims Report, p. 85, *supra* note 6.

the percentage of those cases going directly to adult court increased as well.[48]

Although judicial waiver has been recognized since the 1920s, the Supreme Court's 1966 decision in *Kent v. United States* formed the basis for many States' policies for waiving juveniles. In *Kent*, the Supreme Court stated that juvenile court judges must consider the seriousness of the offense; protection of the community; aggressiveness or premeditation of the offense; prosecutive merit of the complaint; *past record of the juvenile*; and likelihood of the rehabilitation of the juvenile when making a waiver decision.[49] In citing the juvenile's past record as a waiver criterion, the Supreme Court made it that much more important that juvenile records be accurate and complete.

Many States have incorporated the *Kent* factors into their codes. Juvenile judges in Florida, for instance, can waive a case involving a juvenile age 14 or older if the case meets these kinds of criteria. In Maryland, the age floor is 15 for any offense, with no minimum for crimes punishable by death or life imprisonment.[50]

While all of the *Kent* factors are relevant in most States, and while the juvenile's prior history is increasingly important, the age of the juvenile remains the single most important criterion. For example, 42 States do not permit the waiver of a juvenile to an adult court if the juvenile is age 13 or younger, regardless of the presence of any other *Kent* factors.[51] Many States also combine age and severity of the crime as the principal criteria for authorizing juvenile waiver.[52]

Prosecutorial waiver

In many States, prosecutors can also effectively transfer juveniles by opting to file charges in adult court. In these States, the juvenile and criminal courts share concurrent jurisdiction. Prosecutorial transfer, like judicial waiver, is customarily influenced (and made possible) by the juvenile's age and the severity of the crime.[53] Prosecutorial discretion also mirrors judicial waiver in taking the juvenile's prior record into account. Indeed, recent research finds that prosecutors are using juvenile histories not only for charging determinations but also in many other aspects of criminal proceedings.

In a 1992 survey of prosecutors conducted by the Bureau of Justice Statistics (BJS), for instance, 77 percent of respondents reported using juvenile records in felony actions. Prosecutors also reported using juvenile records when filing charges, at bail determinations, at pretrial negotiations, during trial and at sentencing. Most of the time, prosecutors obtain juvenile histories from local authorities (81 percent), but prosecutors also use State repositories (68 percent). Only 39 percent of the prosecutors responding to the survey, however, reported obtaining juvenile records from the FBI.[54]

Automatic transfer based upon age

Although some transfer laws go back to the 1920s and 1940s, State legislatures were particularly active beginning in the 1970s in excluding whole categories of serious crimes from juvenile justice jurisdiction. In addition, most States lowered the minimum age for serious offenses. The GAO report concludes that, "Our review of State laws that exclude certain juveniles from juvenile court jurisdiction showed that the laws primarily focused on serious, violent offenses and/or juveniles with prior court records."[55] The results have been dramatic. In Illinois, for instance, the legislature in 1982 moved to exclude juveniles age 15 or older charged with murder, armed robbery or rape. This meant juveniles in that category would automatically go into the adult system, with no discretion on the part of either judge or prosecutor. From 1975 to 1982, judges in Cook County juvenile court waived a modest 47 cases to adult criminal court. In the first 2 years following the new law, however, criminal prosecutions of juveniles more than tripled to a rate of 170 a year, 151 of which were directly attributable to exclusion.[56]

Many State statutes establish a maximum age limit for juvenile court jurisdiction in delinquency

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[48]GAO Report, p. 10, *supra* note 36.

[49]*Kent v. United States*, 383 U.S. 541, 566-67 (emphasis added).

[50]GAO Report, p.13, *supra* note 36.

[51]U.S. Department of Justice, National Institute of Justice, *State Laws on Prosecutors' and Judges' Use of Juvenile Records*, Research in Brief series, by Neal Miller, Institute for Law and Justice (Washington, D.C.: Government Printing Office, November 1995) p. 4 [hereafter Miller].

[52]Ibid.

[53]Juvenile Offenders and Victims Report, p. 87, *supra* note 6.

[54]Ibid., p. 125.

[55]GAO Report, p. 10, *supra* note 36.

[56]Ibid., p. 88-89.

matters that amounts to automatic statutory transfer to adult courts for those juveniles who exceed the age limit. For example, in three States — Connecticut, New York and North Carolina — 15 is the upper age of juvenile court jurisdiction.[57] Sixteen is the upper age in eight States: Georgia, Illinois, Louisiana, Massachusetts, Michigan, Missouri, South Carolina and Texas.[58] Seventeen is the upper age in 39 States and the District of Columbia: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Delaware, Florida, Hawaii, Idaho, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin and Wyoming.[59]

In some States, the upper age limit is extended for certain classes of juveniles, such as those who have been neglected or abused (Connecticut, Georgia, Illinois, Louisiana, Minnesota, Missouri, New York, North Carolina, South Carolina and Vermont).[60]

Many States also specify the *youngest* age at which a juvenile may be transferred to adult court. In Vermont, the minimum age is 10; in Montana, 12; and in Georgia, Illinois and Mississippi, 13.[61] While 10, 12 or 13 seems, at first blush, to be a remarkably young age for transferring a juvenile to an adult court, practitioners know that 12- and 13-year-olds are often involved in serious felonies. They also know that these 12- and 13-year-olds are, in many respects, still children. An official at the Circleville Youth Center in Ohio, where boys convicted of serious crimes are incarcerated, touched on both of these phenomena: "We have kids 12 and 13 years old. Just the other day we had a 12-year-old who had shot a man. He was so little, I had to order special shoes for him — size 3."[62]

In 16 States, the minimum age is 14: Alabama, Arkansas, Colorado, Connecticut, Idaho, Iowa, Kansas, Massachusetts, Minnesota, Missouri, North Carolina, North Dakota, Pennsylvania, Tennessee, Utah and Wisconsin.[63] It is age 15 in eight States: Louisiana, Michigan, New Mexico, Ohio, Oregon, Texas, Virginia and Washington.[64] And it is age 16 in California, Hawaii and Nevada.[65]

In many States, offenses and ages are linked. In Montana, for example, the minimum age for transfer is 16 for negligent homicide, but decreases to 12 for deliberate homicide.[66] New Jersey amended its juvenile code in 1982 to permit youths as young as 14 to be tried as adults for murder, kidnapping, sexual assault and other violent crimes.[67]
On the other hand, many States do not specify a minimum age for transfer. In 16 States and the District of Columbia, a juvenile can be waived at any age: Alaska, Arizona, Delaware, Florida, Indiana, Kentucky, Maine, Maryland, New Hampshire, New Jersey, Oklahoma, Rhode Island, South Carolina, South Dakota, West Virginia and Wyoming.[68]

The Texas legislature recently enacted a stiffer juvenile code, scheduled to take effect in 1996, which lowers from 15 to 14 the minimum age of juveniles transferable to adult court for murder, serious drug offenses and other crimes. It also expands the list of mandatory sentences for repeat offenders and those convicted of murder, firearms violations and other offenses. "It used to be that the whole purpose (of juvenile law) was to remove the taint of criminality, but that was when kids were committing only 2 percent of overall crime," said State Rep. Leticia Van de Putte of San Antonio, who served on the committee drafting the legislation. "Now it's about 30 percent. So obviously, it's time to change gears."[69]

In early 1996, the Virginia Legislature completed work on new legislation that will automatically transfer juveniles 14

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[57]National Center for Juvenile Justice, "Upper Age of Juvenile Jurisdiction Statutes Analysis," *1990 Update*, by Linda A. Szymanski (Pittsburgh, Pa.: National Center for Juvenile Justice, June 1991) p. 5 [hereafter 1990 Update].

[58]Ibid.; *and see*, Juvenile Offenders and Victims Report, p. 73, *supra* note 6.

[59]1990 Update, pp. 5, 6, *supra* note 57; *and see* Juvenile Offenders and Victims Report, p. 73 and pp. 88-89, *supra* note 6.

[60]1990 Update, pp. 6, 7, *supra* note 57.

[61]National Center for Juvenile Justice, *Waiver/Transfer/Certification of Juveniles to Criminal Court: Age Restrictions — Crime Restrictions*, by Linda A. Szymanski (Pittsburgh, Pa.: National Center for Juvenile Justice, March 1991) p. 9 [hereafter Juvenile Waiver Report]. *And see*, National Center for Juvenile Justice, *1992 Update*, May 1993.

[62]*Washington Post*, *supra* note 13.

[63]Juvenile Waiver Report, p. 9, *supra* note 61.

[64]Ibid.

[65]Ibid.

[66]Ibid., p. 13.

[67]Privacy and Juvenile Justice Records Report, p. 23, *supra* note 1.

[68]Juvenile Waiver Report, p. 9, *supra* note 61.

[69]*San Antonio Express-News*, *supra* note 18.

and older to adult court for serious violent offenses. The new law will also give prosecutors discretion to try juveniles as adults when charged with less serious offenses.[70]

Waiver and transfer case law

Recent court cases reflect the increased use of juvenile record information in connection with waiver to adult court. In *Pennsylvania v. Rush*, for example, the defendant appealed his conviction in adult court of aggravated assault, criminal conspiracy, reckless endangerment, possession of an instrument of crime and a violation of the Uniform Firearms Act. One of his grounds for appeal was that he had been improperly certified for trial as an adult.[71]

Pennsylvania's Juvenile Act provides that "[O]ne who is fourteen years or older, who commits a delinquent act that would be a felony if committed by an adult, may be tried as an adult, if the court finds that he or she is not amenable to treatment in the juvenile system."[72] The burden of proof to show that the statutory prerequisite has been met falls on the Commonwealth.[73] Rush asserted that the Commonwealth did not meet its burden of proof at the certification hearing because it presented no live testimony and relied only on notes of testimony from the preliminary hearing, his "J-file" and his school records. (A "J-file" consists of arrest records, probation reports, psychiatric reports and any other court records pertaining to the juvenile.[74]) The Superior Court held that the Commonwealth had indeed met its burden of proof that Rush was unamenable to rehabilitation. The Pennsylvania Supreme Court affirmed.[75]

In *Massachusetts v. Traylor*,[76] the Appeals Court of Massachusetts, Suffolk County, affirmed the District Court, West Roxbury Division decision to transfer Traylor (charged with manslaughter and assault by means of a dangerous weapon) to adult court, even though experts testified in the District Court trial that Traylor was in fact amenable to rehabilitation. The Appeals Court cited a litany of prior crimes committed by Traylor: at age 12, assault, criminal trespass, burglary and larceny; at age 14, burglary and larceny; and at age 16, two incidences of assault and battery, and motor vehicle theft, armed robbery and carrying a dangerous weapon.

In 1990, the Supreme Court of Vermont held that a trial court was justified in taking a juvenile's record into account in denying the transfer of the juvenile from criminal court, where marijuana charges had been filed, to juvenile court.[77] The record revealed "habitual truancy, six adjudications of delinquency within two years of the most recent arrest, continual curfew violations, and his failure to attend alcohol counseling sessions."[78] Citing *State v. Jacobs*, the court stated, "[D]efendant's juvenile record was properly before the court and clearly supported trial court's findings that transfer to juvenile court was not feasible for dealing with defendant."[79]

Federal case law also reflects the increased use of juvenile records in making waiver decisions. In *United States v. H.S., Jr.*, the U.S. District Court, District of Columbia, found that the transfer to adult court of a 17-year-old boy charged with cocaine possession would be "in the interest of justice" because the juvenile's prior history made it clear that he could not be rehabilitated before his 21st birthday.[80] The court cited the juvenile's prior conviction of possession with the intent to distribute cocaine and also a pending charge for carrying a pistol without a license. It also noted a lengthy record of 11 arrests, including arrests for "possession with intent to distribute cocaine, distribution of cocaine, assault with intent to kill, carrying a pistol without a license, and unauthorized use of a vehicle."[81]

In *United States v. Porter*, the U.S. Court of Appeals, Eighth Circuit, found that the District Court for the Eastern District of Missouri did not err in transferring a juvenile to adult court, stating, "Although he has had only one delinquency adjudication ... he has a history of assaultive behavior, and property damage and stealing offenses in foster homes and residential treatment centers."[82]

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[70]"Sides Agree on Juvenile Bill," *Washington Times*, 1 February 1996, p. C6.

[71]*Pennsylvania v. Rush*, 562 A.2d 285, 286 (Pa. 1989).

[72]Ibid., p. 286.

[73]Ibid., p. 287.

[74]Ibid., pp. 287-88 and note 2.

[75]Ibid., p. 288.

[76]563 N.E.2d 243, 244-45 (Mass. App. Ct. 1990).

[77]*In re R.D.*, 574 Ad.2d 160, 162 (Vt. 1990).

[78]Ibid.

[79]Ibid., (citing *State v. Jacobs*, 472 A.2d 1247, 1250 (1984)).

[80]*United States v. H.S., Jr.*, 717 F. Supp. 911, 915-17 (1989).

[81]Ibid., p. 915.

[82]*United States v. Porter*, 831 F.2d 760, 767 (8th Cir. 1980). *See also, United States v. A.W.J.*, 804 F.2d 492, 493 (8th Cir. 1986).

Impact of waiver and transfer upon juvenile records

Not everyone in the juvenile justice field agrees that waiver or transfer to the adult system is beneficial. Critics of the "get tough" approach argue that more punishment neither prevents recidivism nor makes the streets safer. "In its present overcrowded and crisis-ridden condition, it is doubtful that the adult system can offer the juvenile offender much more than confinement at best and homosexual rape and other brutality at worst," said the National Council on Crime and Delinquency.[83]

For better or worse, this sea of change in juvenile justice is expected to have a dramatic impact on the nature and scope of juvenile justice recordkeeping. The effect may well be to improve the quality of juvenile records and systems and to make once sacrosanct juvenile records more widely available. The more serious the crime, the older the juvenile, the more mobile the youths who commit them, the greater the chance that one jurisdiction's police, courts and social service agencies will have to rely on records of counterparts in other jurisdictions.

Transfer and waiver from juvenile to adult court impacts upon confidentiality in two ways. First, in order to make many waiver decisions, judges and prosecutors need access to complete and reliable juvenile records. Thus, waiver decisions create pressures to improve juvenile records. A 1992 BJS survey of prosecutors found that half criticized the completeness of juvenile records.[84] As the juvenile record system is upgraded in order to meet these needs, juvenile record systems become attractive to other types of potential users, including government agencies and employers. Second, once a juvenile is transferred to adult court, the record of that proceeding loses any protection as a juvenile record and is treated as an adult record.

Many welcome these information system consequences. Relaxation of confidentiality provisions is "long overdue," argued New York University law professor Martin Guggenheim. Similarly, Massachusetts First Justice Gordon A. Martin Jr. has said, "[E]limination of juvenile delinquency's historic cloak of confidentiality is essential to rebuilding trust and dissipating the fear that the closed juvenile system fosters."[85]

Others are not so sure. James J. Delaney, a juvenile and family court judge from Brighton, Colorado, acknowledged that while a juvenile who steals a car and wrecks it may not have the same privacy right as a nonoffender, "[W]e must address the issue of juvenile records and confidentiality with reason. There must be a balancing of rights and obligations, on the part of both the juvenile and society."[86]

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[83]Privacy and Juvenile Justice Records Report, p. 24, *supra* note 1.

[84]Juvenile Offenders and Victims Report, p. 125, *supra* note 6.

[85]Gordon A. Martin Jr., *Open the Doors: A Judicial Call to End Confidentiality in Delinquency Proceedings*, 21 NEW ENGLAND JOURNAL ON CRIMINAL AND CIVIL CONFINEMENT 393, 394-95 (1995), pp. 394-5 [hereafter Martin].

[86]Guggenheim and Delaney, quoted in Privacy and Juvenile Justice Records Report, pp. 17-18, *supra* note 1.

Part IV. Juvenile records: Disclosure and confidentiality

"Publicizing the names as well as crimes for public scrutiny, releases of past records to appropriate law enforcement officials, and fingerprinting for future identification are all necessary procedures in the war on flagrant violators, regardless of age. Local police and citizens have a right to know the identities of the potential threats to public order within their communities."[87] These words of J. Edgar Hoover from 1957 are prophetic when measured against the modern-day trend to propel juveniles accused of crimes into the adult criminal justice system and make records more widely available for multiple uses. Clearly, those who believe that juvenile records are sacrosanct find themselves bearing a heavier burden in an effort to justify their position. The opposite — easier access — is in the ascendant position as public alarm over violent juvenile crime continues to grow.

Access to juvenile law enforcement and court records by the adult system

Statutes are less likely to regulate access to juvenile law enforcement records than to juvenile court records.

Every jurisdiction provides for at least some degree of access to juvenile court records. Criminal court access to juvenile records is easily the most common type of access. Indeed, adult court access to juvenile records of adult defendants is permitted in every State. In 48 States, this authority is explicitly set forth in statute law.[88]

A 1995 National Center for Juvenile Justice survey found that the following organizations and agencies are customarily given access to juvenile court records, whether on a *de jure* or a *de facto* basis:

- Institutions or agencies with juvenile custody (37 States);
- Prosecutors (33 States);
- Juvenile court judges and professional court staff (34 States);
- Law enforcement (26 States);
- Probation officers (26 States); and
- Criminal court staff (24 States).

In addition, 29 States allow inspection of records by the juvenile; 30 States grant access to the juvenile's parents or guardian; 36 States allow the juvenile's attorney to look at records; and 24 States grant access to victims of juveniles. Four States direct that people deemed to be in danger from a juvenile may have access to the juvenile's record or, at a minimum, allow inspection of the juvenile's record. Twenty States now permit school officials at least limited access to information concerning the juvenile's name and address, as well as disposition of charges.[89]

Adult courts are most apt to use juvenile records in sentencing determinations. Twenty-seven States have adopted statutes that prescribe the inclusion of a juvenile record in a presentence report or, at a minimum, authorize the adult court to consider the defendant's juvenile record.[90] In 14 States, a juvenile record is considered among the factors in the State sentencing guidelines. As a practical matter, this means that the juvenile record is "counted" in calculating the offender's criminal history score.[91]

Roughly one-half of the States expressly authorize prosecutors to obtain access to juvenile records for charging determinations.[92] Some States also allow access by social welfare agencies, probation and parole agencies, the military, school authorities, the institution to which the juvenile is confined, the victim of the juvenile's act, researchers, criminal justice agencies to which the juvenile has applied for employment, and "others as the court may determine who have a legitimate interest in the proceedings." Some jurisdictions permit access when specifically authorized by the court. Others specify the parties to whom the record may be released and, additionally, require a court order.[93]

[87] *FBI Law Enforcement Bulletin*, *supra* note 28.

[88] Miller, p. 3, *supra* note 51.

[89] Juvenile Offenders and Victims Report, p. 83, *supra* note 6; *and see*, NCSL Report, pp. 123-125, *supra* note 38.

[90] Miller, p. 3, *supra* note 51.

[91] Ibid.

[92] Ibid.

[93] Juvenile Records and Recordkeeping Systems Report, pp. 22-23, *supra* note 2.

The Criminal Justice Information Systems Regulations (Department of Justice Regulations), published originally in 1976 by the Law Enforcement Assistance Administration (LEAA), also have an impact on the disclosure of juvenile records held by law enforcement agencies. Any State or local law enforcement agency which has received funds from LEAA for the collection, storage or dissemination of criminal history information is prohibited from releasing juvenile records to noncriminal justice agencies unless this release is authorized by a State or Federal statute, court order, rule or decision, or unless the release is to agencies providing a service to the criminal justice agency or to researchers.[94]

In addition, it is increasingly recognized that juvenile records are a key factor in background checks for critical security clearance and hiring and suitability determinations for law enforcement, the military, day care centers, schools and other sensitive occupations and licenses. North Dakota, for instance, authorizes release of juvenile records to the State Department of Human Services when it is for purposes of conducting a background investigation of any prospective employee of a group home or facility under the department's domain.[95]

Federal law makes juvenile court records confidential, subject to seven important exceptions.[96] Six of these exceptions apply to all juvenile delinquency proceedings occurring in Federal courts, and *require* courts to release juvenile court records in the following circumstances:

- In response to inquiries received from another court of law;
- In response to inquiries received from an agency preparing a presentence report for another court;
- In response to inquiries from law enforcement agencies where the request is related to the investigation of a crime or a position within that agency;
- In response to inquiries, in writing, from the director of a treatment agency or the director of a facility to which the juvenile has been committed by a court;
- In response to inquiries from an agency considering the person for a position immediately and directly affecting the national security; and
- In response to inquiries from any victim of such juvenile delinquency or, if the victim is deceased, from the immediate family of such victim, relating to the final disposition of such juvenile.

The seventh exception applies to chronic and serious juvenile offenders over the age of 13, as recently amended by the Crime Control Act of 1994, and requires that information relating to guilty adjudications be transmitted to the FBI. Once there, the FBI treats this information in the same manner as the FBI treats adult conviction information.[97]

Some juvenile codes, such as the one in Georgia, also include a "national security" exception.[98] Utah provides military recruiters with juvenile record information, provided they obtain a signed release from the juvenile. Otherwise, the inquiry is denied.[99] Illinois permits inspection of juvenile records by "authorized military personnel." As is the case in the Federal law, Illinois also permits access to law enforcement agencies doing employment background checks on applicants.[100]

Sealing and purging

Although sealing and purging policies appear to be inconsistent with the trend toward increasing the availability of juvenile records, sealing and purging retains substantial support. In most States, sealing and purging laws remain on the books, frequently with little change over the last decade. The reason, no doubt, is that in most States, sealing and purging is available only for those juvenile offenders who have demonstrated some rehabilitation by establishing a clean record period. Even today, those juveniles who, after committing one or two offenses, establish a clean record period represent the great majority of the juvenile offender population. Studies of the Philadelphia, Arizona and Utah court systems find that well under 50 percent of youths who have contacts with the police prior to their 18th birthday have a multiple contact and, even for youths who are referred to

[94]28 C.F.R. § 20.21(d).

[95]N.D. CENT. CODE § 27-20-54 (1991); also, N.D. CENT. CODE § 27-20-51 et seq. (Supp. 1995).

[96]18 U.S.C. § 5038(a).

[97]18 U.S.C. § 5038(f) as amended by PUB. L. 103-322, 108 STAT. 2032, September 13, 1994.

[98]GA. CODE ANN., §§ 15-11-20 through 15-11-65 (Michie Supp. 1995).

[99]UTAH CODE ANN. § 78-3a-44 (Supp. 1995).

[100]Ill. Legis. Serv. P.A. 89-377, § 10 (West).

juvenile court, the Utah study found that only 41 percent return to juvenile court.[101]

All but two States govern by statute the sealing and expungement of juvenile records. Sealing and expungement laws, like other laws governing juvenile justice records, are more likely to apply to juvenile court records than to law enforcement records.

In 21 States, the law calls for the sealing of juvenile court records. In 24 States, the law calls for record expungement. In 40 States, sealing and expungement is discretionary with the court; in 8 States, it is mandatory.[102] During the 1995 legislative sessions, three States amended their sealing and expungement law: Connecticut made expungement more difficult by extending the time period that must elapse from a juvenile conviction before the record is eligible for purging,[103] and Idaho and Wyoming spelled out new criteria that must be met when a juvenile petitions a court for expungement.[104]

Where records may be sealed, certain conditions must usually be met, including a clean record period, no subsequent convictions or adjudications, no pending proceedings, attainment of a defined age, expiration of juvenile court jurisdiction, satisfactory outcome of the proceeding for which the record was created, and the type of offense. Expungement guidelines are similar to sealing guidelines, but because of the finality of expungement, court orders are almost always required.

In most States, access to sealed records is strictly regulated. Only a few States do not address the issue. In over 20 jurisdictions, consent of the court is required. In several States, the record may be unsealed if the juvenile is convicted of another crime or adjudicated delinquent. In three States, reopening of the record in these circumstances is automatic.[105] The courts have made clear that there is not a constitutional right to seal or expunge juvenile records and that a court may unseal records.

The Supreme Court of Nevada, for example, held that the disclosure in a news story of a former juvenile offender's hit-and-run conviction, which resulted in the death of a police officer, did not result in an actionable tort because publication was a legitimate concern to the public. Even though the incident occurred 20 years before the story was published and the records were sealed, the court found that this disclosure was "closely related to the subject matter of the news story" and stated, "The killing of police officers is a subject of grave public interest and, unfortunately, was an item of current public concern because of the recent murder of a police officer."[106]

Under New York's Family Court Act,[107] a termination of a delinquency proceeding results in the automatic sealing of the record unless the presentment agency can demonstrate that the interests of justice require otherwise. In the case of *In the Matter of Paul R.*, a juvenile violated parole by not residing with his father, as instructed, and by being arrested twice in another county while waiting for a dispositional hearing for unlawful possession of weapons. The hearing was to take place on December 13, 1988. He did not appear until July 11, 1991, when he voluntarily returned himself on warrant. Because he was then 19 years old, working full-time and serving a term of probation, the presentment agency waived the hearing and dismissed the delinquency proceeding. However, the Family Court of King's County, New York, declined to seal the juvenile's records because, "Sealing these records would reward and encourage such disrespect for the court. The interests of justice will be served by allowing the record to remain unsealed."[108]

Illustrative State laws

As noted, State laws regarding disclosure and confidentiality customarily address who can and cannot have access, and they contain exceptions and limitations as well. In addition, most of the laws spell out timetables for sealing and expunging juvenile records if a juvenile offender reaches adulthood without subsequent brushes with the law.

Some examples:

Alabama. Inspection of law enforcement juvenile records is permitted by juvenile courts, officers of the State human resources and youth services departments, and "any other

[101] Juvenile Offenders and Victims Report, p. 49, *supra* note 6.

[102] Miller, p. 5, *supra* note 51.

[103] 1995 Conn. Acts, P.A. 225; *and see*, NCSL Report, p. 123, *supra* note 38.

[104] 1995 Idaho Sess. Laws, chap. 277, § 9; 1995 Wyo. Sess. Laws, chap. 145; *and see*, NCSL Report, pp. 123, 125, *supra* note 38.

[105] Miller, p. 5, *supra* note 51.

[106] *Montesano v. Donrey Media Group*, 668 P.2d 1081, 1088 (Nev. 1983).

[107] § 375.1(2)(f).

[108] *In the Matter of Paul R.*, 573 N.Y.S.2d 858, 860 (N.Y. Fam. Ct. 1991).

person, agency or institution that the juvenile court determines after a hearing, to have a legitimate interest in the case or in the work of the law enforcement agency." Juveniles themselves must move to seal records. Courts will seal records if 2 years have passed without any criminal conviction or other adjudication of delinquency. Any inquiry about the existence of such records may rightfully draw the answer "no record exists." The sealing order is nullified if there is a subsequent conviction or delinquency adjudication. A juvenile meeting these conditions may move to expunge records at age 23. Physical and identifying information may be entered into local, State and national criminal justice information systems.[109]

Arkansas. Delinquency records of crimes for which the juvenile could have been tried as an adult are to be made available to prosecutors for sentencing if the juvenile subsequently is tried as an adult, or to determine if the juvenile should be tried as an adult. Records of serious crimes are to be kept 10 years after the last adjudication as a juvenile or finding of guilt as an adult. Other juvenile records may be expunged at any time or when the juvenile reaches age 21. Prosecutors or juvenile courts may disclose information to the victim or victim's next of kin and the juvenile's school superintendent.[110]

California. Juveniles may petition for sealing of all records after age 18 or 5 years after the juvenile was last required to go to a probation officer. Prosecutors and probation officers are to be notified and given an opportunity to testify at a hearing on the petition. Records are to be destroyed 5 years after sealing, unless the court determines "good cause" exists to maintain them. Copies of juvenile records are to be filed at the school the juvenile is attending in order to better understand the juvenile and protect school employees. In 1995, the California Legislature expanded the list of who has access to include prosecutors, police, judges, probation officers, child protective agencies, the juveniles themselves and their parents and lawyers. The intent, the legislature said, is to, "promote more effective communication among juvenile courts, law enforcement agencies and schools to ensure the rehabilitation of juvenile criminal offenders."[111]

Florida. Delinquency records are kept until the offender reaches age 24, or 26 if the juvenile is a "serious or habitual delinquent child," or until 3 years after the child's death (whichever is first). Records may then be destroyed, unless the juvenile committed a serious felony-type crime. Those records are sealed. Records may be inspected by the juvenile, the juvenile's parents or guardian or lawyer, law enforcement, the State Department of Juvenile Justice and its designees, the Parole Commission and the Department of Corrections. Law enforcement may release the name, address and photograph of a juvenile arrested for a crime that would be a felony if committed by an adult, or three or more adult-level misdemeanors.[112]

Georgia. Court records are open to juvenile courts, lawyers for parties to the proceedings, institutions or agencies with custody of the juvenile, law enforcement officers "when necessary for the discharge of their official duties," officials preparing presentence reports, penal institutions and parole boards. Court records may be reviewed by school officials with permission of a juvenile judge. Records are sealed 2 years after the juvenile's final discharge, provided the juvenile's subsequent record is clean. Records may be destroyed 10 years after discharge, but must be maintained permanently if parental rights to a child have been terminated.[113]

Nevada. Records are available only through court order to "persons having a legitimate interest" in a particular juvenile case. Nevada courts have interpreted this section liberally, saying it is up to the judge to balance the needs of the juvenile and the requesting party. Release without a court order is limited to records of traffic violations, which are transferred to the State motor

[109] ALA. CODE §§ 12-15-100 through 12-15-103 (1995).

[110] ARK. CODE ANN. §§ 9-27-309; 9-27-352 (Michie Adv. Code Service March 1995). Also, ARK. CODE § 9-27-352 (Michie 1993).

[111] CAL. WELF. & INST. CODE § 389 (West Supp. 1995). Also, CAL. WELF. & INST. CODE § 389 (West 1984) and § 781 (West Supp. 1995); 1995 Cal. Legis. Serv. ch. 71, § 1 (West); CAL. WELF. & INST. CODE § 827.5 et seq. (West Supp. 1995); CAL. WELF. & INST. CODE § 825 et seq. (West 1984); CAL. PENAL CODE § 851.8 (West Supp. 1995); and CAL. PENAL CODE, §§ 851.7-8 (West 1985).

[112] 1995 Fla. Sess. Law Serv. ch. 95-147, § 1344 (West) and ch. 95-418, § 117 (West). Also, FLA. STAT. ANN. § 39.045 (West Supp. 1995).

[113] GA. CODE ANN. §§ 15-11-20 through 15-11-65 (Michie Supp. 1995). Also, GA. RULES OF CT. ANN., Uniform Rules for the Juvenile Courts of Georgia, § 3 (1996 and Supp. 1996).

vehicles bureau, and records required by probation officers for the preparation of presentence reports. Juveniles may petition the court for the sealing of all records (except those that are traffic-related) 3 years after the last juvenile court referral or expiration of the court's jurisdiction. Prosecutors and probation officers have an opportunity to contest the sealing. All records are sealed automatically when the juvenile reaches age 24. All sealed records are to be treated as though they never existed, but courts under certain circumstances still may review them.[114]

New Hampshire. Records are to be "withheld from public inspection," but open to institutions where the juvenile is in custody, juvenile service officers, parents, guardians, the juvenile's lawyer and "others entrusted with the corrective treatment of the minor." Additional access may be granted with written consent of the juvenile. Once a juvenile reaches 19, all police and court records will be sealed and placed in an "inactive" file. Courts may grant victims access to information on a juvenile's name, age, address and custody status, as well as pertinent information on court proceedings and final disposition. Victims also are to be informed of changes in the juvenile's status in relation to the courts or juvenile detention facilities. Victims are to receive notices of termination of court jurisdiction and "any information concerning the minor's intended residence."[115]

North Dakota. Juvenile court records are closed to all but juvenile judges and court staff, parties to the proceeding or their lawyers, agencies supervising the juvenile, professionals preparing presentencing reports, staff of the crime victims compensation program and police in certain circumstances. A juvenile judge may grant access to all persons who show in writing "a legitimate interest in a proceeding or in the work of the juvenile court, but only to the extent necessary to respond to the legitimate interest." High school principals also can obtain access with a judge's permission. Names of juveniles may be disclosed upon a second or third adjudication of delinquency, depending on the seriousness of the crimes. The same rules of access generally govern police juvenile records, except other law enforcement agencies are permitted wider latitude than in the case of court records.[116]

Oklahoma. Juvenile police and court records are generally closed, except for the following: in traffic cases; in cases in which a juvenile has a previous record and is then adjudicated delinquent after July 1, 1995; or in cases in which a juvenile is adjudicated delinquent for a crime that would be a felony if committed by an adult. In addition, records are open to inspection without court order to judges, court staff, State review boards, prosecutors, police, State legal and social service agencies, the juvenile and the juvenile's parents, guardians or lawyer, Federally recognized Indian tribes, the governor, any official in the U.S. Department of Health and Human Services, and the chairman of any State legislative committee issuing subpoenas for the records. Records are to be sealed 1 year after closure of a case or discharge by juvenile authorities, provided the juvenile has maintained a clean record in the interim. Any record not unsealed after 10 years is to be obliterated.[117]

Utah. Court records may be inspected by social service agencies with custody, parents, guardians, lawyers or officials doing background checks for concealed weapons permits. Juveniles themselves, persons having a "legitimate interest in the proceedings," and researchers may be granted access by court order. In cases of juveniles over age 16 charged with crimes that would be felonies if committed by adults, the court will release petitions, adjudication or disposition orders, and summaries of delinquency records. Juveniles may petition the court for expungement 1 year after release from detention or 1 year after termination of the juvenile court's jurisdiction. Records are to be expunged if the juvenile has not been convicted of a crime in the meantime and no felony or misdemeanor charge is pending. If a judge grants the petition, photographs and other records are to be destroyed, but fingerprints must be preserved.[118]

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[114]NEV. REV. STAT. ANN. § 62-370 (Michie Supp. 1993). Also, NEV. REV. STAT. ANN. §§ 62-370 and 62-380 (Michie 1986).

[115]N.H. REV. STAT. ANN. § 169-B:35 et seq. (1994); also, N.H. REV. STAT. ANN. §§ 62.370 and 62.380 (Michie 1986).

[116]N.D. CENT. CODE § 27-20-54 (1991); also, N.D. CENT. CODE § 27-20-51 et seq. (Supp. 1995).

[117]OKLA. STAT. ANN., § 7307.1.1 et seq. (West Supp. 1996).

[118]UTAH CODE ANN. § 78-3a-44 (Supp. 1995); also, UTAH CODE ANN. §§ 78-3a-55 and 78-3a-56 (Supp. 1995); also, UTAH COURT RULES ANN., Judicial Council Rules of Judicial Administration, Rules 7-203, 7-308 (1995 & Supp. 1995).

1995 legislative activity

— *State activity*

The 1995 legislative sessions were marked by successful efforts in many States to expand access to juvenile court records by school authorities; by victims; by various State agencies; and, in one State, Missouri, by the adult courts. In 1995, legislatures in Connecticut, Georgia, Idaho, Maryland, Missouri, Texas, Virginia and Washington gave schools express access to juvenile records. Georgia, for example, requires written notice to school superintendents when a juvenile is subject to an adjudicative hearing for a crime that would be a felony if involving an adult or where the juvenile has previously been adjudicated delinquent.[119] Maryland amended its law to require notification of school superintendents of certain kinds of juvenile court records and juvenile law enforcement records regarding enrollees.[120] Virginia's new law requires that school superintendents be notified when delinquency petitions for certain kinds of serious offenses are filed in juvenile court.[121] In all of these States except Washington, redisclosure of juvenile records by school officials is expressly prohibited and punishable. In Washington, the statute provides immunity for school employees who subsequently release juvenile record information.[122]

Four States — Connecticut, North Dakota, Utah and Virginia — amended their laws in 1995 to expand agency access to juvenile records. North Dakota, for example, now grants access to juvenile court records to the State Department of Human Services (DHS) staff and to law enforcement officers in order to discharge their duties under the National Child Protection Act.[123] North Dakota also amended its law to allow the DHS to review juvenile court records for background investigations of employees in licensed facilities or homes providing services to young children.[124] Utah amended its law to give authorities access to an applicant's juvenile records when the applicant seeks a concealed weapons license.[125] Virginia amended its law to permit probation and pretrial service officers to review the records of a juvenile offender without first obtaining a court order.[126]

Finally, in 1995, Missouri amended its criminal procedure law to allow prior juvenile adjudications to be used to impeach the credibility of a witness or defendant in a criminal case.[127]

— *Federal activity*

Federal law on the release of juvenile records is expected to become more pro-disclosure and less pro-confidentiality. On September 15, 1995, Sen. John Ashcroft (R-Missouri) introduced S. 1245, the "Violent and Hard-Core Juvenile Offender Reform Act of 1995." The Bill mandates that the Federal government and the States (on pain of losing block grant funds) create and maintain juvenile records, regardless of age, for all those tried for serious crimes, including murder, rape, armed robbery and drug trafficking, and requires that the records be available to law enforcement, courts and schools. Fingerprints and photos must be forwarded to the FBI. Records of all felonies committed by youths age 14 or older would be subject to similar procedures. The records of juveniles judged delinquent in two felony cases would be made available to the public.[128]

In the House, Rep. Charles Schumer (D-New York), long thought to be a proponent of juvenile record confidentiality, introduced similar legislation in December 1995. Schumer's bill would reduce Federal juvenile justice grant funds to States which fail to amend their laws to increase juvenile record availability.[129] Specifically, the bill would require States to ensure that if a juvenile court proceeding finds a juvenile guilty of a crime that would be "criminal" if committed by an adult, a record is kept of the crime

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[119] 1995 Ga. Laws, Act 328; *and see*, NCSL Report, p. 123, *supra* note 38.

[120] 1995 Md. Laws, chap. 112; *and see*, NCSL Report, p. 124, *supra* note 38.

[121] 1995 Va. Acts, chap. 429; *and see*, NCSL Report, p. 125, *supra* note 38.

[122] 1995 Wash. Laws, chap. 324; *and see*, NCSL Report, p. 125, *supra* note 38.

[123] 1995 N.D. Sess. Laws, chap. 303; *and see*, NCSL Report, p. 124, *supra* note 38.

[124] 1995 N.D. Sess. Laws, chap. 304; *and see*, NCSL Report, p. 124, *supra* note 38.

[125] 1995 Utah Laws, chap. 286; *and see*, NCSL Report, p. 125, *supra* note 38.

[126] 1995 Va. Acts, chap. 430; *and see*, NCSL Report, p.125, *supra* note 38.

[127] 1995 Mo. Laws, H.B. 174, 325 and 326 amending § 491.078; *and see*, NCSL Report, p 124, *supra* note 38.

[128] S. 1245, 104th Congress, 1st Session. Text of Ashcroft speech in *Congressional Record*, 15 September 1995, S13656. *See also*, S. 1036 introduced by Senators Cohen (R-ME) and Kohl (D-WI), which provides special attention to gang-related and violent juvenile crime.

[129] H.R. 2817, "Juvenile Records Act of 1995."

similar to an adult record; retained for the same period as the adult record; and made available to law enforcement and school officials in the same way that an adult record would be available. Moreover, the juvenile must be fingerprinted and photographed, and the court must transmit the record to the FBI.

The Ashcroft and Schumer bills are illustrative of the emerging bipartisan consensus that juvenile records should be treated just like adult records and should be available in the same manner as adult records.

Disclosure to the public and the media

Juvenile law in many States increasingly permits juvenile record access by the media and the public, or at least parts of the public.[130]

To be sure, some of the court opinions and State laws regarding media and the juvenile justice system touch on the question of access to actual juvenile court proceedings, not law enforcement records. The U.S. Supreme Court has affirmed the right of courts, in general, and juvenile courts, in particular, to close proceedings to the press and public. But the Court also has said that juvenile courts cannot keep news organizations from publishing or broadcasting juvenile names and other information once they obtain this information.[131]

— *Legislative activity*

Well over 30 States now allow public release of a juvenile offender's name and sometimes photographs, in some circumstances. Those circumstances customarily involve violent or serious crimes or repeat offenders.[132] Mississippi actually requires publication of the names of repeat juvenile offenders and their parents. Florida releases the name and photograph of juveniles charged with a felony or convicted of three equivalent misdemeanors. Petitions and orders in Tennessee are open on juveniles age 14 and older accused of murder, rape, aggravated robbery or kidnapping.[133] Two States provide not just for public access, but expressly for media access. In Illinois, media access requires a court order, and in Wisconsin the media enjoy access to juvenile records but cannot disclose the juvenile's name.[134] Maine permits public access to juvenile proceedings when youths are charged with felonies.[135] Minnesota requires juvenile courts to "open the hearings to the public in delinquency or extended jurisdiction juvenile proceedings" involving felonies allegedly committed by youths age 16 or older at the time of the offense.[136]

In 1995 alone, legislatures in 10 States amended their juvenile record law to permit public access in certain circumstances: Delaware, Georgia, Idaho, Iowa, Louisiana, Missouri, North Dakota, Utah, Virginia and West Virginia.[137] In Delaware, for example, a new law authorizes the release of a child's juvenile record, as well as his name and address and the parents' names, in the case of certain serious offenses by recidivists.[138] Georgia's new law provides for public access to a juvenile hearing involving a felony or where the juvenile has previously been adjudicated delinquent.[139]

Idaho has perhaps gone further than any other State and, effective October 1, 1995, makes all juvenile court records open to public inspection unless there is a court order forbidding it. In some cases, social records are also available.[140] Iowa now permits the release of the name of a juvenile alleged to have committed a delinquent act which would be an aggravated misdemeanor or felony if committed by an adult.[141] Similarly, the new Louisiana law permits the disclosure of juvenile court records once a juvenile has

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[130]At least 17 States — including Florida, Georgia, Illinois and Indiana, for instance — explicitly permit juvenile record access by researchers. The hurdles imposed on researchers often are considerable, but rarely insurmountable. Indiana, for instance, requires the person conducting the research to convince a juvenile judge that safeguards are adequate to protect the identities of those whose records are being reviewed. Georgia stipulates that judges may impose whatever conditions they deem proper on researchers.

[131]*Oklahoma Publishing Co. v. District Court*, 480 U.S. 308 (1977); *Smith v. Daily Mail Publishing Co.*, 443 U.S. 97 (1979).

[132]Juvenile Offenders and Victims Report, p. 83, *supra* note 6.

[133]Martin, pp. 404-405, *supra* note 85.

[134]Juvenile Offenders and Victims Report, p. 93, *supra* note 6.

[135]ME. REV. STAT. ANN. tit. 15 § 3307 (West 1980).

[136]MINN. STAT. ANN. § 260.155(1)(c) (West Supp. 1995).

[137]NCSL Report, pp. 122-125, *supra* note 38.

[138]70 Del. Laws, chap. 23; *and see*, NCSL Report, p. 123, *supra* note 38.

[139]1995 Ga. Laws, Act. 328; *and see*, NCSL Report, p. 123, *supra* note 38.

[140]1995 Idaho Sess. Laws, chap. 44, § 26; *and see*, NCSL Report, p. 123, *supra* note 38; *and see further*, IDAHO CODE §§ 20-525 and 20-525A (Michie Supp. 1995).

[141]1995 Iowa Acts, chap. 191; *and see*, NCSL Report, p. 123, *supra* note 38.

been adjudicated delinquent for a violent crime. In addition, the new law requires that juvenile proceedings involving an adjudication for a violent crime be open to the public.[142] Utah's new statute allows public access to juvenile court records when a juvenile is age 16 or older and has committed an offense that would be an adult felony.[143] Virginia's new law extends public disclosure to children as young as age 14 when charged with a delinquent act that, if committed by an adult, would be considered an "act of violence."[144]

In 1994-1995, Illinois amended its juvenile record law not once, but twice. Together, the new law requires the release of a juvenile's name and address for certain very serious felony convictions, provided that the juvenile is at least age 13 at the time of the offense. Specifically, the new Illinois law requires juvenile courts to release the names and addresses of juveniles if they are adjudicated delinquent for:

- The furtherance of a felon while a member of, or on behalf of, a "criminal street gang";
- A felony act involving the use of a firearm;
- Certain felonies or certain repeat offenses involving drugs; and
- Certain very serious felony offenses.

— *Judicial activity*

Recent court opinions indicate that many courts are increasingly willing to give juvenile record statutes a reading which promotes public access to juvenile records. In 1993, in a case involving a Federal Freedom of Information Act request for records of the Morro Castle ship disaster of 1984, the U.S. Court of Appeals for the Third Circuit ruled that State juvenile records are not covered by the confidentiality provisions of the Federal law,[145] and thus cannot be withheld under Federal Freedom of Information Act exemptions.[146]

In two recent cases, one from the Third Circuit and one from the First Circuit, Federal appellate panels ruled that the Federal law making juvenile proceedings in Federal courts confidential[147] does not impose a blanket ban on public access to juvenile court proceedings and records. Rather, the courts said, Federal law gives judges authority to regulate access on a case-by-case basis.[148]

Other recent State court opinions also illustrate that judges are willing to be flexible in deciding when a public requester is deserving of access. When Massachusetts, for instance, toughened its juvenile code to permit media access to proceedings for juveniles accused of murder (even when they were younger than 14), the Supreme Judicial Court of Massachusetts found the change to be constitutional. "A juvenile does not have a fundamental due process right to have the public excluded from his transfer hearing," the court ruled.[149] In 1988, for example, the Supreme Court of Alabama ruled that an insurance company had a "legitimate interest" in inspecting juvenile records of two youths accused of deliberately setting a fire.[150] The Supreme Court of Nevada in 1989 applied similar logic in a case involving a juvenile who hosted a wild drinking party while his parents were on vacation. A friend of the juvenile accidentally killed himself with a gun kept in the house and the dead youth's estate sued the juvenile's parents for civil damages. The parents attempted to block disclosure of their son's juvenile record, but the court ruled that under Nevada law, the deceased's survivors had a "legitimate interest" in the records.[151]

Of course, juvenile records can still be sealed and expunged, but with greater media attention and access to juvenile justice matters, chances are greater than in the past that a sensational case may come back to haunt the accused. The Gina Grant story is a case in point. In 1990 in Columbia, South Carolina, Gina Grant, at age 14, used a candlestick holder to kill her abusive, alcoholic mother. For First Amendment reasons, the family court judge elected not to bar the media from the proceedings. Grant served 6 months in juvenile detention and was released to live with relatives, remaining out of public view until her 18th birthday. Her records were ordered sealed.

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[142] 1995 La. Acts, Act 1313; *and see*, NCSL Report, p. 124, *supra* note 38.

[143] 1995 Utah Laws, chap. 273; *and see*, NCSL Report, p. 125, *supra* note 38.

[144] 1995 Va. Acts, chap. 558 and 804; *and see*, NCSL Report, p. 125, *supra* note 38.

[145] 18 U.S.C. § 5038.

[146] *McDonnell v. U.S.*, 4 F.3d 1227 (3d Cir. 1993).

[147] 18 U.S.C. § 5038.

[148] *U.S. v. A.D.*, 28 F.3d 1353 (3d Cir. 1994); *U.S. v. Three Juveniles*, 61 F.3d 86 (1st Cir. 1995).

[149] *News Group Boston, Inc. v. Commonwealth*, 568 N.E.2d 600, 603 (Mass. 1991).

[150] *Ex parte State Farm Fire & Cas. Co.* 529 So.2d 975 (Ala. 1988).

[151] *Hickey v. Eighth Judicial District Court*, 782 P.2d 1336 (Nev. 1989).

Grant went on with her life, confident there was no way the existence of the record could be divulged to prospective employers, colleges or universities. She developed into an honors student, was captain of the tennis team and was accepted for early admission to Harvard. Grant answered in the negative a question about past dismissals, suspensions or probation at school. But Grant allowed herself to be featured in an admiring *Boston Globe* portrait about troubled youth growing up strong and resilient. The reporter did not know Grant had murdered her mother. Inevitably, news clips from her trial were sent to the *Boston Globe* and Harvard, and the resulting storm was featured on ABC's "Nightline" and the *New York Times* editorial page. Harvard rescinded her admission. As columnist Ellen Goodman put it, "Grant was never more than a Nexis search away from revelation."[152]

[152]Goodman, "A Promising Student, An Unclean Slate," *Boston Globe*, 16 April 1995, p. A7.

Part V. The juvenile record information system at mid-decade

Juvenile law enforcement records

Almost invariably, a juvenile arrest results in the creation of a record within the police department making the arrest. Historically, police had wide discretion in determining what kinds of records they created and maintained. The creation of a record customarily depended on variables, including the severity of the crime, the juvenile's record, the juvenile's attitude upon arrest, and the police officer's background and attitude. A survey of the New York Police Department found that the difference between the creation of a record and no record often depended on the interplay between juvenile and police officer at the time of arrest.[153]

By 1988, most law enforcement agencies in most States had adopted the practice of assigning a unique, statewide "tracking" number to a juvenile at the time that a juvenile record is created.[154] Increasingly, agencies also photograph and fingerprint juveniles. In most States, juvenile photographing and fingerprinting is governed by State law with specific rules setting age limitations, as well as rules for forwarding of fingerprint records to State repositories, and for sealing and destruction. Traditionally, photographs and fingerprints were taken only for more serious crimes likely to go before a juvenile judge. Today, laws in 40 States expressly authorize police to take fingerprints when arresting a juvenile.[155] Only two States, Missouri and North Dakota, forbid the fingerprinting of juveniles.[156] In 22 States, statutes authorize fingerprints in only those cases where the arrest would have been for a felony if committed by an adult. In five States, fingerprinting is authorized whether the offense would have been a felony or a misdemeanor. The statutes in 13 States do not link fingerprinting authority to the type of crime.[157]

In 1995, several States amended their laws to change and, with one exception, expand the circumstances under which juveniles can be fingerprinted. Connecticut, for example, now authorizes law enforcement agencies to make a description, photograph and fingerprint of a child of any age once the child is charged with a felony.[158] Idaho has amended its law to require the fingerprinting and photographing of juvenile offenders taken into detention.[159] Missouri now requires law enforcement officials to fingerprint juveniles arrested for felonies.[160] North Dakota also revised its law regarding fingerprinting and photographing of juveniles to expand the permissible circumstances.[161] Georgia, too, amended its law to *permit* fingerprinting and photographing of juveniles charged with the adult equivalent of a burglary or any other offense where the adult court has exclusive or concurrent jurisdiction.[162]

Juvenile law enforcement records, which historically have been maintained on a disbursed and local basis, are becoming centralized on a statewide basis — much as adult records became centralized during the 1960s and 1970s. As of 1988, only 13 out of the 50 State repositories maintained juvenile record information.[163] At present, statutes in 27 States expressly authorize a State central repository to collect and maintain juvenile criminal history data (juvenile arrest and any disposition arising from a juvenile or adult court).[164] In four of those States, the statute authorizes the establishment of a distinct State central juvenile history repository. In the other 23 States, however, the authorization for statewide, centralized maintenance of a juvenile record is directed to the adult State central repository. In several other States, the statute is silent or references the maintenance of juvenile records in a State central repository. Five more States

[153]Privacy and Juvenile Justice Records Report, p. 30, *supra* note 1.

[154]Juvenile Records and Recordkeeping Systems Report, p. 17, *supra* note 2.

[155]Miller, p.2, *supra* note 51.

[156]Ibid., pp. 3, 7.

[157]Ibid., p. 3.

[158]1995 Conn. Acts, P.A. 225; *and see*, NCSL Report, p. 123, *supra* note 38.

[159]1995 Idaho Sess. Laws, chap. 49; *and see*, NCSL Report, p. 123, *supra* note 38.

[160]1995 Mo. Laws, H.B. 174, 325 and 326 amending §§ 43.503, and 211.151; *and see*, NCSL Report, p. 124, *supra* note 38.

[161]1995 N.D. Laws, chap. 124, §§ 9, 12, 16, 17, 18; *and see* NCSL Report, p. 124, *supra* note 38.

[162]1995 Ga. Laws, Act 328; *and see*, NCSL Report, p. 123, *supra* note 38.

[163]Juvenile Records and Recordkeeping Systems Report, p. 17, *supra* note 2.

[164]Miller, p. 3, *supra* note 51.

authorize the central repository to maintain only the fingerprint record of juveniles who have been arrested. In 1994, Georgia and Iowa repealed statutes forbidding the State central repository from collecting and maintaining juvenile record information. Also in 1995, Florida repealed its law prohibiting the creation, on a statewide basis, of comprehensive juvenile history records.[165] As of 1995, only five States still have statutory provisions which prohibit a State central repository from maintaining a juvenile record.

In 1995, four States took legislative action addressing the centralization of juvenile justice records:

- Alaska established a DNA registry to contain DNA samples drawn from juveniles age 16 or older and adjudicated delinquent for an offense that would be a felony if committed by an adult;[166]
- Iowa's legislature took action to include juvenile adjudication information for aggravated misdemeanors or felonies in the adult rap sheet maintained by the State central criminal history repository;[167]
- Minnesota's legislature called for the preparation of a report regarding the creation of a separate information and tracking system for juvenile justice information;[168] and
- Texas amended its law to require the Department of Public Safety to establish and maintain a statewide juvenile justice information system.[169]

Federal events parallel State developments. As noted earlier, the Federal juvenile records confidentiality law requires that when a juvenile is found guilty of an act that would be a felony crime of violence if committed by an adult, the juvenile must be photographed and fingerprinted.[170] The same statute also provides that if the juvenile has twice been adjudicated for a felony or if the juvenile is 13 or older and has been convicted of a felony crime of violence with a firearm, then the Federal court must transmit to the FBI the juvenile court record along with the fingerprints.[171]

In a related development, on July 15, 1992, the FBI published a final rule reversing decades of prior policy and authorizing the FBI to receive juvenile records from the States regarding serious offenses and to maintain those records in the FBI's national criminal history system. Furthermore, the FBI announced that the rules for disseminating juvenile criminal history data, once in the FBI database, would be the same as applies to the dissemination of adult criminal history information.

States may choose whether to submit juvenile record information to the FBI. To date, very few States provide very little juvenile record information to the Bureau. The reason for the States' lack of enthusiasm, however, may have more to do with the cost and administrative difficulty of submitting juvenile records and less to do with privacy concerns.

The extent of automation of juvenile criminal history and fingerprint records varies greatly from jurisdiction to jurisdiction. A 1988 survey found that approximately 41 percent of agencies had automated their juvenile records.[172] Today, that figure is higher, but no recent survey information is available. In addition, many agencies are incorporating juvenile prints in adult systems. For example, the City of San Francisco automates the fingerprints of all juveniles arrested for felony-equivalent offenses or second-degree misdemeanors in its Automated Fingerprint Identification System.

Juvenile court records

The local prosecutor's office or juvenile probation department act as "intake" officers for the juvenile court. About half the cases that pass through their hands are resolved informally with no court intervention whatsoever. Often juveniles and their families come to some kind of agreement about restitution, school attendance, curfew or drug counseling. Monitoring compliance becomes the responsibility of the juvenile probation officer. Success in following the conditions usually leads to dismissal. Failure may lead to formal prosecution.[173]

Virtually every State has laws requiring that upon referral to a juvenile court, records be created

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[165]Ibid.

[166]1995 Alaska Sess. Laws, chap. 10; *and see*, NCSL Report, p. 122, *supra* note 38.

[167]1995 Iowa Acts, chap. 191 amending § 14-17, 46; *and see*, NCSL Report, p. 123, *supra* note 38.

[168]1995 Minn. Laws, chap. 259, Art. 1, § 57; *and see*, NCSL Report, p. 124, *supra* note 38.

[169]1995 Tex. Gen. Laws, chap. 262; *and see*, NCSL Report, p. 125, *supra* note 38.

[170]18 U.S.C. § 5038.

[171]18 U.S.C. § 5038(d) and 5038(f) as amended by PUB. L. 103-322, September 13, 1994.

[172]Juvenile Records and Recordkeeping Systems Report, p. 19, *supra* note 2.

[173]Juvenile Offenders and Victims Report, p. 77, *supra* note 6.

and maintained. Most juvenile courts assign each offender a unique number. This number, however, does not always correlate to the offender's law enforcement agency number. Most States separate juvenile records at this stage into two categories: legal and social.

Legal records include the type of documents one would expect to be recorded in an adult court proceeding. There is a petition, usually stating the juvenile's age and address, the names of the juvenile's parents and guardians, and a narrative of the offense. In addition, there are the usual summonses, notices, lawyers' motions and court findings, judgments and orders.[174]

Social records include information collected about the juvenile's family background, any medical or mental health tests or examinations administered, and any other information gathered by social workers. These records range over much broader territory than court records; thus, they are generally accorded a higher degree of confidentiality. Typically, a court order is required for anyone seeking access to these other than the juvenile, the juvenile's lawyers, or court and rehabilitative personnel.[175]

Typically it is the State-run youth and family services agency that binds the disparate local juvenile justice systems together. In Florida, for instance, the Department of Health and Rehabilitative Services (DHRS) includes an assistant secretary-level office for programs, one of which is Children, Youth and Families. The office is involved in virtually all aspects of any legal proceeding as the juvenile's case moves through the system, including detention, probation and parole, and alternative programs. Of course, statewide law enforcement agencies, including the Florida Department of Law Enforcement (FDLE), the State Court Administrator's Office and the Florida Department of Corrections, are involved as well. The FDLE receives fingerprint and photo cards on juveniles determined by the court to have committed crimes that would be felonies if carried out by an adult. The file also contains the juvenile's name, address, date of birth, sex and race — far from the entire record. However, field units of the State DHRS maintain a Client Information System that keeps a "copy of record" of each social service contact generated as juveniles move through the evaluative and rehabilitative side of the system. Among the records kept are social workers' assessments, psychological evaluations, school and medical notes, and narratives. At the end of the line, the file is put in storage at the local unit that last dealt with the juvenile.

With a large mobile population that includes migrant farmworking families, Florida, in 1982, set up the Dependency and Delinquency Referral Subsystem, which is on-line 24 hours a day. Each instance of child abuse, juvenile delinquency and status offense is entered into the system, searchable by name, alias and social security number. Delinquency intake officers feed information into the database and more data are entered as the juvenile goes through the system. Thus, in one automated file, a juvenile's entire history within the system is accessible.[176]

Utah maintains a statewide Juvenile Justice Information System, which puts court dockets, summonses, hearing notices, rap sheets and intake cover sheets at the fingertips of any law enforcement or court officer. It is regularly updated and corrected as youths move through the system. It is organized around an identifying number that stays with the juvenile regardless of the path taken through the police, court and social service network. Since 1983, police have had access to the statewide hookup to check court records, warrants, pick-up orders and, since 1988, complete rap sheets. The only limitations are that record checks should be conducted in connection with an arrest or as part of an official investigation and the printing of hard copies is prohibited.[177]

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[174]Privacy and Juvenile Justice Records Report, pp. 36-37, *supra* note 1.

[175]Ibid.

[176]Susan K. Chase, "Florida's Client Information System," in Juvenile and Adult Records Proceedings, pp. 62-64, *supra* note 4.

[177]Michael R. Phillips, "A State Index of Juvenile Records," in Juvenile and Adult Records Proceedings, pp. 67-69, *supra* note 4.

In Maricopa County, Arizona, the Juvenile Court Center has an integrated data and word processing system which serves the county attorney, public defender and court clerk. These records are shared in turn with law enforcement personnel and the adult probation department. Requests for information from law enforcement officers alone number over 100 per day.[178]

Most jurisdictions, however, still maintain juvenile records in a disparate fashion, and there is little consistency from one State to the next. As of 1988, only about 25 percent of the States had fully automated juvenile court records and only another 25 percent had partially automated juvenile court records.[179] Howard Snyder of the National Center for Juvenile Justice, the research division of the National Council of Juvenile and Family Court Judges, has promoted the concept of a juvenile record database similar to one in existence for statistical juvenile court records, the National Juvenile Court Data Archive. This archive collects original data from jurisdictions nationwide and converts it to a uniform structure via specialized software. Snyder argues the information would be comprehensive, accurate and timely because jurisdictions would submit it as they use it and thus have a "personal stake in its accuracy," and also because it does not require a significant amount of extra work.[180]

"This approach accepts the reality of Federal, State and local funding patterns and turf conflicts. In addition, the design recognizes the reality that law enforcement and court personnel will not maintain an external reporting system with the same sense of ownership and the same care for accuracy that they have for their own primary recordkeeping," Snyder said.[181]

Clearly, however, development of recordkeeping systems must proceed further before this kind of database becomes feasible. A 1988 survey of more than 500 police departments and juvenile judges showed a widespread dissatisfaction with the quality of juvenile records. Less than half the law enforcement agencies responding said they had a way of finding the court disposition of juvenile cases in their own jurisdictions. Juvenile disposition reporting to State repositories is low — well under 50 percent as a national average. Other survey respondents said that even though getting the information was no problem, manpower shortages made the task of inputting the information a near impossibility.[182]

One record, one system?

With more interplay between the juvenile and adult justice systems than ever before, pressure grows to interconnect the two recordkeeping systems — either by integrating juvenile record information into adult criminal histories or by maintaining, or at least linking, adult criminal histories with juvenile histories. Nevertheless, numerous States — Georgia, North Dakota, New Hampshire and Oklahoma, for instance — still stipulate in their juvenile codes that the records remain separate.[183] On the other hand, Utah's juvenile law gives police direct terminal access to computerized juvenile rap sheets through their statewide criminal record hookups. While adult and juvenile files technically may be separate, a *de facto* blending is only a few keystrokes away as far as the Utah police officer is concerned.[184]

Debate over connectivity between juvenile and adult records is strong on both sides of the issue. "The juvenile justice system is currently being pressured to change, to voluntarily lessen the differences between itself and the adult system, and in doing so abandon the principles on which it was established," said Howard Snyder of the National Center for Juvenile Justice. "The juvenile justice system should open its records to the criminal justice system and the public only if it is in the best interest of the child, and I have serious doubts that it ever would be." Nevertheless, from a technical standpoint, Snyder said, "[J]uvenile and adult legal records can be linked together ... the technical problems are easily addressed ... the new

[178]Ernesto Garcia, "An Integrated County Court System," in Juvenile and Adult Records Proceedings, p. 65, *supra* note 4.

[179]Juvenile Records and Recordkeeping Systems Report, p. 19, *supra* note 2.

[180]Howard N. Snyder, "Thoughts on the Development of and Access to an Automated Juvenile History System," in Juvenile and Adult Records Proceedings, pp. 53-56, *supra* note 4 [hereafter Snyder].

[181]Ibid.

[182]Sheila J. Barton, "Juvenile Records and Recordkeeping Systems: Summary of a National Survey," in Juvenile and Adult Records Proceedings, pp. 25-29, *supra* note 4.

[183]*See* GA. CODE ANN. § 15-11-59(a) (Supp. 1996); N.D. CENT. CODE § 27-20-52 (Supp. 1995); N.H. REV. STAT. ANN. § 169-B:35 (1994 & Supp. 1995); OKLA. STAT. ANN. tit. 10, § 7005-1.2 (as amended by 1996 Okla. Sess. Law ch. 297, § 22).

[184]UTAH CODE ANN. § 78-3a-44 (Supp. 1995).

technologies make the merger more feasible."[185]

The late Romae T. Powell, as a juvenile court judge in Fulton County, Georgia, asserted that, "The goals of the juvenile justice system, while holding the child accountable for the delinquent acts, are different from the goals of the adult system. The juvenile justice systems' goals are to use their records to rehabilitate ... . One record, one system then, in my opinion, will destroy this mandate."[186]

Judge Powell offered six reasons for opposing interconnection or integration: (1) one record would foster the notion that, like their adult counterparts, juveniles are not particularly rehabilitatable; (2) one record would unfairly single out minority and poor white youth; (3) serious juvenile offenders already are in the adult system, so a merger would incorporate records of less dangerous youth more likely to be rehabilitated; (4) irrelevant information about family members would be incorporated into criminal records, compromising privacy; (5) the juvenile justice system has not been proven to be totally ineffective; and (6) the adult criminal system is inherently more stigmatizing than the juvenile one.[187]

In the public's mind, however, there is a powerful counter-argument in statistical growth of violent juvenile crime and fear over being the next helpless victim in the headlines. "To the crime victim, and society as a whole, it matters not whether the offender is 16 or 17, or has just turned 18," said Reggie B. Walton, formerly presiding judge of the criminal division of the District of Columbia Superior Court. "What is important is that a crime has been committed, an injury has been sustained and protection against further acts by the perpetrator are taken if and when the offender is apprehended ... greater utilization of juvenile records is warranted, so long as measures have been taken to guard against abuses."[188]

Uncertainty in the States as to the relationship between the juvenile and adult systems, particularly the information systems, is illustrated in the number of task forces and commissions which State legislatures in 1995 have directed to study these issues. California, for example, has a statewide task force looking at juvenile crime and juvenile justice system responses, including information issues.[189] Iowa has established a task force to develop a plan for shared jurisdiction between the juvenile and adult systems.[190] The Minnesota Legislature has adopted legislation requiring a plan to track juvenile recidivism and to prepare a report to the legislature on the privacy of juvenile records and the related development of a juvenile justice information and tracking system.[191] Montana has created a juvenile justice study commission and will require a legislative report with recommendations.[192] Also in 1995, Oregon created the Oregon Youth Authority and required the Authority to establish a plan for a juvenile recidivism reporting system.[193]

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[185]Snyder, p. 56, *supra* note 180.

[186]Romae T. Powell, "The Impact of a Merged Record on the Mission of the Court," in Juvenile and Adult Records Proceedings, p. 37, *supra* note 4.

[187]Ibid.

[188]Reggie B. Walton, "Utilization of Juvenile Records in Adult Criminal Proceedings — A Judge's Perspective," in Juvenile and Adult Records Proceedings, p. 43, *supra* note 4.

[189]1995 Cal. Stat., chap. 454; *and see*, NCSL Report, p. 100, *supra* note 38.

[190]1995 Iowa Acts, chap. 191, § 57; *and see*, NCSL Report, p. 101, *supra* note 38.

[191]1995 Minn. Laws, chap. 226, Art. 3, § 55-57, 61; *and see*, NCSL Report, p. 102, *supra* note 38.

[192]1995 Mont. Laws, chap. 436; *and see*, NCSL Report, p. 102, *supra* note 38.

[193]1995 Or. Laws, chap. 422, § 1b, 75 and 128; *and see*, NCSL Report, p. 102, *supra* note 38.

Conclusion

There can be little doubt that the juvenile justice system and, therefore, policies for handling juvenile justice information are in transition. In 1995 alone, the National Conference of State Legislatures' Annual Survey of Legislative Activity Affecting Children and Youth identified 290 new legislative provisions in 49 States addressing and amending the juvenile justice process. As noted earlier in this report, several States have established commissions and task forces to review juvenile crime and the juvenile justice system and to propose legislative recommendations. Other State legislatures, such as Virginia's, have already implemented substantial overhauls of the juvenile justice system.

Juvenile justice trends

There are three trends involving juvenile justice records that are particularly striking.

— More juveniles are subject to transfer to adult court

First, over the last few years there has been, without question, a substantial increase in the juvenile offender population which is subject to transfer to an adult court. Once in an adult court, of course, the record of that proceeding is maintained and disseminated in the same way as any other adult record. The effect of this, naturally, is to substantially increase, as compared to a juvenile justice record, the circumstances under which and the extent to which the record can be shared outside of the juvenile justice and criminal justice systems.

It is important, however, to put this trend in perspective. In the period 1988 through 1992 (the last period for which there is national data), juvenile court judges waived 1.6 percent of formal delinquency filings to adult court. This is up from 1.2 percent in 1988.[194] Furthermore, national data indicate that the number of juvenile cases filed directly in criminal courts range from less than 1 percent to approximately 13 percent.[195] What this means, obviously, is that while the number of juveniles being tried as adults is increasing on a percentage basis, this number still represents a very small percentage of the total juvenile offender population. Of course, it is also important to bear in mind the changing definition of a juvenile. As States lower the jurisdictional age limit for juvenile court (which, as noted earlier, in some States is now 16 and in several States is 17), the population amenable to juvenile court jurisdiction declines substantially.

— Juvenile justice record information is increasingly available outside the juvenile system

The second clearly discernible trend is that juvenile justice record information is becoming increasingly available outside of the juvenile justice system. In contrast to the situation in the early 1980s when SEARCH conducted extensive research for its 1982 publication, *Privacy and Juvenile Justice Records*, the situation as of the end of 1995 is that juvenile justice record information is almost fully available to adult courts for sentencing and to adult courts for most other purposes. In roughly one-half the States, prosecutors have a statutory right of access to juvenile record information and a BJS survey indicates that most prosecutors, in most States, have little difficulty in obtaining access. The result is that the "two-track" system of justice — in which an active and serious juvenile offender would, upon reaching the age of majority, start over as a first-time offender — is in full decline.

In addition, juvenile record information is increasingly available to law enforcement agencies and is becoming available to State and Federal noncriminal justice agencies for national security and military recruiting purposes and for background check purposes in connection with sensitive positions. Increasingly, too, juvenile record information — at least some portion — is available to the public, particularly in the case of older and repeat juvenile offenders adjudicated for violent crimes.

Of course, here too, it is easy to overstate the extent to which juvenile record information is available. Law enforcement juvenile records, in particular, as opposed to juvenile court records,

[194]GAO Report, p. 2, *supra* note 36.

[195]Ibid.

remain largely unavailable outside of the criminal and juvenile justice systems. And even juvenile court information is unavailable to the general public in most States except in certain limited circumstances.

Nevertheless, the trend appears to be moving in the direction of making juvenile records more open and this trend appears to be a response to serious and frequent juvenile crime and juvenile recidivism. The movement toward openness has three important information implications, involving privacy, sealing and expungement laws and data quality:

(1) To the extent that juvenile records are open and available, juveniles will enjoy less privacy and will have to bear the consequences of the stigma carried by a criminal record.

(2) As the National Institute of Justice report points out, the juvenile sealing and expungement laws remain relatively unchanged. This means that in many States, juvenile information disclosure and sealing and purging laws require examination. Adult courts which are entitled and, indeed, required to take juvenile records into account in sentencing determinations may not be able to obtain juvenile records because they have been purged. It also means that the sealing and purging laws may be less effective because juvenile record information already disclosed outside of the system is unaffected by expungement orders. In many States, of course, the dissonance between disclosure laws and sealing and purging laws may be acceptable or even desirable, in that nonchronic and "rehabilitated" juvenile offenders are beneficiaries of sealing and purging provisions.

(3) It can be expected that as juvenile records become more available outside of the juvenile justice system, pressure will mount to improve the accuracy and completeness of these records. Indeed, a BJS survey already documents that prosecutors are unhappy with the completeness and reliability of juvenile records. If juvenile records are going to be used by adult courts for sentencing and other purposes, and used by noncriminal justice organizations for key decisions affecting access to security clearances, licenses and employment, it follows that there will be significant pressure to ensure that juvenile records are accurate and complete.

— *Integration of juvenile and adult records is increasing*

The third trend now emerging is the integration or interconnectivity of juvenile and adult records. Integration is taking two forms. First, to the extent that juveniles are tried as adults, the records of this adult proceeding are treated as adult records and fully integrated into the adult criminal history. Second, States and, particularly, the Federal government increasingly take the position that juvenile record information should be captured on adult criminal histories.

Even where juvenile record information is not integrated into adult records, juvenile record information is increasingly likely to be housed at the State repository for adult criminal histories. As noted, 24 States now authorize their adult criminal history repository to maintain juvenile records. The trend to fingerprint juveniles, which has now reached over 40 States, facilitates the involvement of adult repositories which, in virtually every State, require that all records maintained in the repository be fingerprint-supported. Improvements in software and computing also facilitate the integration and interconnectivity of adult and juvenile record systems. Even when both sets of records are maintained together, it is a relatively simple and inexpensive matter, given today's software and computer capabilities, to tag the juvenile information and apply dissemination and other standards to this information which differ from adult standards.

Status at mid-decade

It is still too soon to say what type of statewide and, ultimately, national juvenile record system will emerge. This system could be accomplished by integrating juvenile records fully into adult criminal history record information; or by maintaining juvenile justice record information in State juvenile justice repositories; or, as a middle ground, by maintaining juvenile records as separate records, but housed in the same system and operated by the same agency which maintains adult records. At mid-decade, it appears that this latter, middle ground is most

likely to emerge as the template for statewide systems.

Thus, at mid-decade, many of the questions posed in the 1982 national report are being answered. Juvenile record information will be fingerprint-supported. Juvenile record information will be automated and available on a statewide basis. Juvenile record information will be fully available to the adult criminal justice system and partially available for noncriminal justice decisions. Older juveniles with a serious and frequent record of offenses will be tried as adults and their records similarly treated as an adult record.

Perhaps only one fundamental question remains unanswered. Even with the erosion of support for the treatment model, there is still a very real question as to whether juvenile record information, for at least some juveniles, should continue to be treated differently than adult criminal history record information. Certainly, at mid-decade most juvenile record information in most States remains subject to different laws and policies than adult criminal history information. The question, then, is not whether there will be integration and interconnectivity or whether there will be increased openness of juvenile records. The question is how far these trends will go. Most observers believe that well into the next century, juvenile records will continue to receive treatment that is separate and apart from and, ultimately, more protective than adult criminal history record information.

Appendix

Juvenile justice timeline

Juvenile justice timeline

Colonial period through early 19th century	Juveniles are tried in adult courts as adults. There is little recordkeeping, but to the extent that court records exist, they are open to the public. Many jurisdictions maintain public "shaming" policies. Delaware, for example, forces convicted thieves to wear a "T" around their neck for 6 months.
1828	12-year-old James Guild is hanged for killing a woman. Progressives agitate for a separate criminal justice system for children.
1899	Illinois establishes the first juvenile court system.
1905	Illinois enacts legislation prohibiting juvenile records from being introduced in adult courts or otherwise made public.
1925	All but two States have followed Illinois in establishing either a juvenile court system or a juvenile probation program.
1920s	The National Probation and Parole Association and the Federal Children's Bureau campaign for States to close their juvenile courts and to seal juvenile court records in order to foster rehabilitation.
1950s	High water mark for the percentage of juveniles who are tried in juvenile courts and for the application of strict confidentiality rules for juvenile records. Very little in the way of juvenile recordkeeping is undertaken by law enforcement agencies.
1957	J. Edgar Hoover calls for reversing juvenile confidentiality policies and advocates publicizing the names and activities of juvenile felons.
1966-67	U.S. Supreme Court decides *Kent* and *In re Gault,* holding that due process protections apply to a juvenile court proceeding.
1980s	Numerous commentators and State legislators question the utility of juvenile record confidentiality. SEARCH and the Bureau of Justice Statistics (BJS) publish the first comprehensive examination of juvenile record policy and practice.
1992	The FBI announces that it will accept juvenile records reported by State central repositories and will treat these records as adult records.
1992	A BJS survey of prosecutors finds that 50 percent fault the accuracy and completeness of juvenile record information available to them.
1993	The U.S. Conference of Mayors calls for eliminating confidentiality protections for violent juvenile offenders.
1994	Illinois enacts one of the first "public release" laws requiring courts to release names and addresses of juveniles convicted for serious felony offenses.
1994	Federal omnibus crime law requires selective release of juvenile record information.

1995 The *GAO Report* finds that since 1978, 44 States and the District of Columbia have amended their laws to facilitate the transfer of juveniles to adult courts.

1995 Legislatures in over a dozen States open juvenile records to schools, victims, State agencies and others.

1995 Legislatures in 10 States amend their juvenile record law to permit public access, in certain circumstances, to juvenile records.

1995 U. S. Sen. John Ashcroft (R-Missouri) introduces a bill to require States to treat violent and hard-core juvenile offenders as adults and to make juvenile record information available on the same basis as adult information.

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